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Official Report of Debates (Hansard)

Monday 28 August 2000

Journal des débats (Hansard)

Lundi 28 août 2000

**Standing committee on
justice and social policy**

Subcommittee report

Electronic Commerce Act, 2000

**Comité permanent de la
justice et des affaires sociales**

Rapport du sous-comité

Loi de 2000 sur le
commerce électronique



Chair: Marilyn Mushinski
Clerk: Susan Sourial

Présidente : Marilyn Mushinski
Greffière : Susan Sourial

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Monday 28 August 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Lundi 28 août 2000

The committee met at 1006 in room 151.

SUBCOMMITTEE REPORT

The Chair (Ms Marilyn Mushinski): I call the meeting to order. Members of committee, please accept my apologies for being late—a misunderstanding in my office.

We will turn to the agenda for this morning. This is a meeting of the standing committee on justice and social policy to deal with Bill 88, An Act to promote the use of information technology in commercial and other transactions by resolving legal uncertainties and removing statutory barriers that affect electronic communication. The first item of business is the subcommittee report on Bill 88. Do I have a motion?

Mr Gerry Martiniuk (Cambridge): I move adoption of the subcommittee report on Bill 88.

The Chair: OK. You need to read it into the record, please.

Mr Martiniuk: Your subcommittee on committee business met on Thursday, July 20, 2000, to consider the method of proceeding on Bill 88, An Act to promote the use of information technology in commercial and other transactions by resolving legal uncertainties and removing statutory barriers that affect electronic communication, and recommends the following:

(1) That the committee intends to meet for three days for the purpose of conducting public hearings in Toronto, Monday, August 28, 2000; in Kitchener-Waterloo, Tuesday, August 29, 2000; and in Ottawa, Wednesday, August 30, 2000, subject to confirmation of travel bookings.

(2) That the clerk, with the authority of the Chair, will post information regarding the hearings one day in a local English- and French-language daily in Ottawa, one day in a local English-language daily in Kitchener-Waterloo, Sault Ste Marie, Thunder Bay, Sudbury, North Bay and Timmins, and one day in a French-language daily that covers northern Ontario as well as for a longer period of time on the Ontario parliamentary channel and on the Internet.

(3) That interested people who wish to be considered to make an oral presentation on Bill 88 should contact the committee clerk by 5 pm on Friday, August 18, 2000.

(4) That individuals be allotted 15 minutes and experts or groups 30 minutes.

(5) That the clerk be authorized, in consultation with the Chair and the subcommittee as necessary, to schedule witnesses from the names of members of the public who contacted the clerk's office directly, and to make all arrangements necessary for public hearings.

(6) That the deadline for written submissions be 5 pm, Friday, August 25, 2000.

(7) That in Toronto, on the first day of public hearings, the appropriate staff of the Ministry of the Attorney General will provide a 20-minute technical briefing followed by 40 minutes of questions. The time for questions is to be divided equally among the three parties.

(8) That the parliamentary assistant, the opposition critic and the third party critic each shall have 20 minutes for a statement after the technical briefing and questions.

(9) That the committee meet on Monday, October 2, 2000, from 3:30 pm to 6 pm for clause-by-clause consideration of the bill.

(10) That the legislative research officer prepare a synopsis on what other jurisdictions in Canada and abroad have done with similar legislation as well as a brief, to be distributed prior to the commencement of the public hearings, on the issues of personal identification and privacy.

The Chair: All in favour of the subcommittee report?

Mr Tony Martin (Sault Ste Marie): I just wanted to comment and to put on the record that my suggestion that this bill travel into the north was blocked by the government and I found that rather unfortunate. I will expand on that somewhat in my comments this morning, in that part of the agenda where I get to have my 20 minutes.

The Chair: OK. All in favour of the report of the subcommittee? That carries.

Members of committee, we need to discuss the deadlines for amendments. It has been suggested that we try to have all amendments in by Friday, September 29. Does any member of committee wish to discuss that?

Mr Marcel Beaubien (Lambton-Kent-Middlesex): Madam Chair, is September 29 what you said?

The Chair: Friday, September 29.

Mr Beaubien: Agreed.

The Chair: Mr O'Toole?

Mr John O'Toole (Durham): Agreed.

The Chair: I need a motion.

Mr Martiniuk: Perhaps a little earlier. Considering that our hearings will be complete basically during the next few days, one would think that we have adequate time to get amendments in by September 22, which gives

us at least three weeks in order to prepare and file amendments so that we can adequately consider them other than just on a weekend. I'd like to hear the suggestions of the opposition.

The Chair: And you would so move, Mr Martiniuk?

Mr Martiniuk: Yes, I would so move that the time limit for amendments to be filed before this committee shall be September 22, 2000.

Mr Monte Kwinter (York Centre): I have no problem with that date just as long as everybody knows what it is, so that they're aware of it.

The Chair: So we have a motion to set the deadline for amendments as September 22, 5 pm. All in favour of that? That carries.

There is one other matter before me, members of committee, in that I have received a request from Osler, Hoskin and Harcourt, who have asked permission to present a written submission to committee after the deadline of August 25, 5 pm. What is the wish of committee? No problem with that? All in favour? That carries.

ELECTRONIC COMMERCE ACT, 2000

LOI DE 2000 SUR LE COMMERCE ÉLECTRONIQUE

Consideration of Bill 88, An Act to promote the use of information technology in commercial and other transactions by resolving legal uncertainties and removing statutory barriers that affect electronic communication /
Projet de loi 88, Loi visant à promouvoir l'utilisation des technologies de l'information dans les opérations commerciales et autres en éliminant les incertitudes juridiques et les obstacles législatifs qui ont une incidence sur les communications électroniques.

MINISTRY OF THE ATTORNEY GENERAL

The Chair: We'll move to the technical briefing and ask for staff members of the Ministry of the Attorney General to please come forward.

Mr John Gregory: Good morning, Madam Chair, committee. My name is John Gregory. I am general counsel with the policy branch of the Ministry of the Attorney General and have been involved in the development of Bill 88 and of the Uniform Electronic Commerce Act on which it was based. I'm basically the ministry person on this one.

What I would like to do here is give a brief overview. I know I have 20 minutes, and no doubt I'll be able to fill that time. There are, of course, in the binders a number of things that summarize the bill in different ways, including the compendium that's in the binder.

The purpose of the bill is to ensure that electronic communications can be legally effective. Sometimes we say we are making the law media-neutral; that is, neutral as between communications on paper and communications by an electronic medium.

It is minimalist legislation in that it does not go into technological details about how you have to communi-

cate, or what software or hardware or security devices you have to use. There are a number of reasons for that. One of them is that the technology is changing so quickly that by the time you legislate it, it's likely to be obsolete. Another is that you might reduce innovation by channelling the use of technology in particular directions. Another is that the act applies very broadly to almost all rules of law in Ontario, so that to provide a special rule that might be appropriate for one use might tie the hands of someone with a different use. So what we have are essentially minimalist standards which would give legal effect to electronic communications in most legal relationships in Ontario. The act excludes a certain number of relationships and also a certain number of types of document where the policy has been that it is not appropriate to allow these things to happen with those minimal standards. We'll come back to the exceptions in a moment, but that's the general approach.

The legislation is very much in accordance with international and national principles. The basic working document and the basic expression of international principles in this area is the United Nations model law on electronic commerce, which was adopted in 1996. The General Assembly of the United Nations recommended that all member states adopt this legislation. A number of countries have done so already, and a number of other countries are in the process of doing that.

For our purpose, of course, our main trading partner is the United States. The United States has a Uniform Electronic Transactions Act which was adopted last year and which has been passed by over 20 states already. That's very quick progress, to in a year have nearly half the states adopt it. In addition, the United States has passed federal legislation as of June of this year, the E-SIGN act, for electronic signatures in global and national commerce or whatever. It promotes the same UN standards.

In Canada, the Uniform Law Conference, which is a federal-provincial legal harmonization body made up of government and private sector legal people, adopted last year a Uniform Electronic Commerce Act intended to implement in Canada the United Nations model law. Our Bill 88 is consistent with and is drawn from the UECA. Saskatchewan, British Columbia and Manitoba have introduced statutes, and Saskatchewan has passed its version, based on the uniform act, and there are at least four other jurisdictions that are likely to introduce similar legislation in the next few months, so it's definitely the national standard in Canada. The federal government has consistent legislation as well, and we can come back to that if you wish.

What I'd like to do is give an idea of the main features of the bill and then a couple of the technical details, and then I'll deal with points that may be of interest to members of the committee in response to questions.

1020

The basic application is, the bill applies to rules of Ontario law. It doesn't say that specifically. It basically says, "Where a rule of law requires an original signature

and so on, here's how you do it electronically." It doesn't say "Ontario law" because that's all we're able to legislate about and we don't have to spell it out every time.

It basically applies to all legal relationships and legal documents in Ontario law except for the particular named documents. Wills and most powers of attorney are exempted; most land transfers are excepted; negotiable instruments, cheques and promissory notes are excepted; election documents are excepted. The reason for many of the exemptions is not to say, "You can't do this electronically; you should never do this electronically," but rather to say, "You need more protection; you need more details about the security than we are providing in this act." This act basically says, "Here you go. With minimal legislated standards you may use electronic communications, electronic signatures, and it will be as legally effective as if you were using paper documents, ink-on-paper signatures."

But for matters like a will or like a promissory note, we're saying, "Wait a minute. You need more security about that and there's not enough in this bill to give that protection, so we're not going there." With land transfers, of course, Ontario has an electronic land registry system, the Teranet system. Teranet is coming this afternoon and no doubt will tell us more, but that is supported by a statute and a whole lot of regulations, a whole lot of electronic security devices, which is quite appropriate for that kind of high-value transaction. So this act, Bill 88, won't apply to it, but that doesn't mean you can't do it; you just have to go to the special rules that are already in place for that.

Another class of exception to Bill 88 is rules of law that have already contemplated electronic transactions. We're not trying to override the existing law on electronic communications. One of the examples that occurs to me is the Electronic Registration Act, 1991, which supports Personal Property Security Act registration interests in cars. When you have a conditional sale of a car or something, the security interest there is registered electronically under a separate statute of the Ministry of Consumer and Commercial Relations. We didn't want to second-guess them. They've got their system; they've got their regulations. Everybody has already been doing it for years. We're staying out of that. We're not trying to harmonize the existing array of places where people have already said, "Yes, we've thought about electronic communications; this is how it should be done." So in Bill 88 we're staying out of places where it's already allowed, regulated or prohibited.

The other place where this act doesn't apply is with biometric information, the exchange of biometric information as an identifier, where there is not either express consent by the people knowing, basically with their eyes open, or statutory authority. That's a provision we put after discussions with the Information and Privacy Commission.

Other than that, we're covered; the act will apply. There is a provision that says other types of documents or

types of transactions may be excepted by regulation. The purpose of that is not because we have a whole lot of other exceptions in mind, but frankly as a safety valve—there are 550 Ontario statutes and a whole lot more regulations—if somebody comes up after royal assent to this bill and says, "Ah, but what about the whatever act?" that we had never thought of. We have been thinking for several years about this, so I don't know of any; I can't think of one that won't work. But just in case, we won't have to reconvene the Legislature if someone comes up with it in January or something. If it's a clear exception, we can put it in by regulation. That's a safety valve rather than something we expect to use.

General scope applies to all Ontario law except for the listed exceptions. The other very important provision about scope is that it operates on consent. Section 3 of the act says that this act doesn't require anybody to use or accept electronic documents or documents in electronic form. If someone is not comfortable with electronic communications, they can simply say, "No, I don't want it. I'm not going to deal with it. Give me things on paper." This act doesn't authorize anybody to override that.

As the people who do home banking electronically have agreed already, I can agree with my bank or with whomever I deal with that we should deal electronically and that will be legally effective. Of course, this act intends to support that kind of agreement and make it legally effective. It removes the uncertainty about the legal effectiveness of that kind of agreement. But it is by agreement. If I don't want to go there, I can say "no," and that's very important.

It's important for two reasons. One, of course, is that it protects the people who are not yet comfortable with electronic communications and protects their ability to maintain documents on paper. The other thing it does is allow them to consent conditionally. That's not spelled out in the act, but I think if I can say "no," I can say "yes, but," which means, "I will take things electronically if you give it to me in a word processing program I recognize and can actually open and read," or "I will accept this electronically if you use an electronic signature procedure that I consider trustworthy, rather than anything that you might happen to invent," or "I will accept electronic documents from you of a certain kind, but not of another kind." When I say "I," it can be I as an individual, but it could be I as a private business or I as an insurance company that will say, "All right, I will take applications for insurance policies electronically, but I will not take proofs of claim," or "I will take proofs of claim electronically but I won't take the basic application." There are ways of organizing that sort of conditional consent. The consent principle is very important. It's the basic protection against people having electronic information thrown at them when they are not prepared to deal with it.

The basic rule of Bill 88 is, no discrimination. That is to say, information is not ineffective legally just because it's in electronic form. There is a double negative in

there, and of course legislative counsel immediately says, "Couldn't you be positive about that and say it is effective?" The reason for that is because there are any number of reasons that something may be invalid. We can't say, "This is valid." Yes, it may be valid electronically, but it may be invalid because a person didn't have the capacity to contract, if it's a contract, or because they were a minor or because they didn't know what they were doing, or because there was duress or because it didn't have all the details in it. Lawyers are good at thinking of reasons why things may be invalid. What we're saying here is simply that just because it's electronic it isn't invalid. All the other universe of reasons that may support something being legally effective or legally ineffective remain at play.

I take you back to what I said at the beginning. We make the law media-neutral so the lawyers can play here as well as they can play anywhere else, but everybody else can deal. Of course, people are out there dealing now. There's a lot of electronic commerce being done and a lot of electronic communications being done and people are hoping it's effective. What this does is allow them to uncross their fingers a little bit. So generally, no discrimination based on the use of electronic medium, and the general consent provision, as I mentioned.

Then we go through a number of types of requirement: a requirement that something be in writing, a requirement that notice be provided, a requirement that something be signed, a requirement that something be original, a requirement that documents be retained.

The Income Tax Act requires you to keep documents for three, four or five years. There are lots of statutes that do. Basically it says, "You may do this electronically." It tends to say, "You may do this electronically if you meet these minimal criteria," so the criterion for the writing requirement is if the electronic document is accessible for subsequent reference. It basically says it has to have some durability. It's not specified any more. This paper document has durability, but I could take it outside where I'm allowed to light a match and I could burn it and it no longer exists. It's not guaranteed to be permanent, but it lasts for a while. Likewise with electronic; it has to be available for subsequent reference.

If it's a notice provision, then the person who gets it has to be able to keep it, store it and print it, so they get to decide, not the provider of the information, how long it lasts. There are similar provisions for originals and so on.

Those standards are taken very much from the United Nations' model law; they are international standards.

1030

There are some other provisions about copies, special rules, notice provisions and so on that we can talk about later.

I want to talk about three things very briefly. One is rules on contracts and general information, and one is on the information on public documents. Actually, I may perhaps have a very brief word on privacy.

On contracts: There are a number of provisions separate from the writing, signature, original require-

ments, just saying essentially that contracts may be valid even if they're electronic, and then it goes on to say they may be valid even if they are done between electronic agents, essentially software programs that automate things. So when do I consent to something? I don't have to be paying attention at the time in order for me to consent and support the contract. There are provisions about when notices are sent and where they are received so that I don't have to figure out, if I go into my e-mail when I'm in Vancouver, does that mean British Columbia law applies just because I happen to send the e-mail from there, though in fact I carry on business in Ontario? Or, if I use my Hotmail account and Hotmail operates out of a server in Seattle, then I'm suddenly caught by the state of Washington's law despite the fact that I go into Hotmail from downtown Toronto. We're trying to get rid of that kind of question, so there are a few of those general contractual terms.

The second technical comment is on public bodies. There is a definition of "public body" which essentially means government ministries, agencies, boards and commissions and municipalities. There are two or three particular provisions about government bodies. One ensures that government bodies are allowed to use electronic communications. For the provincial government that's not really a problem; for municipalities it might be, or for some kinds of agencies and commissions. So we're spelling it out. Another is that their consent to use electronic information has to be spelled out rather than implied by their conduct. Another is that just for incoming information, they may prescribe information technology standards to say, "Give us information in a particular way or in a particular format."

Communications between private parties are generally done on some kind of consent or contractual basis. If I deal with my bank or my insurance company, or Chapters.ca if I buy a book, this is a consensual relationship. There are contracts with contract terms that may spell out how I do these things. A lot of people communicate to government and send information to government, not because government has a contract with them but because it's in the nature of government to require information, because a statute requires information.

People may submit information involuntarily. An income tax return is an example. Some people would rather not be doing it, but nevertheless they have to and they submit the information, but they may not submit information in a way that the government finds it easy to use. So the government has to basically protect itself by ensuring that the information will be, to start with, compatible with its operating systems so that they can actually read it and process it and file it with the rest of the files, and that it will be reliable. If the government has to prosecute somebody for filing false information, they want to be able to prove later that, yes, that person sent this information. So they may well want to say, "We want a particularly reliable form of communication coming in." Since it doesn't have a contract with all these

people, it can't simply say, as my bank will say: "All right, you used this particular software for communicating with us and you're stuck with it. If you do it, this is the consequence." It puts government into the same position that people who deal by contract are already in.

The third thing I wanted to mention is privacy, a couple of things about that. This act specifically says it does not override the Freedom of Information and Protection of Privacy Act. I don't think it would have anyway, but the Information and Privacy Commission wanted us to spell that out so that it was beyond all doubt so we didn't have any problem with that. We've spelled it out so it's beyond all doubt.

The Ministry of Consumer and Commercial Relations, as you probably know, is doing a consultation for private sector privacy legislation to cover everybody who is not covered by FIPPA or MFIPPA, the municipal equivalent, and that will basically give the privacy protection. Federal legislation will kick in slowly if the provincial government doesn't legislate, but basically privacy protection is being handled there as a separate project. This one, Bill 88, will ensure legal effectiveness of the relationships. What people do with the personal information, whether they get it electronically or in any other way, will be handled by whatever the Ministry of Consumer and Commercial Relations comes up with. That ministry is very much aware of our bill and we're aware of where they are going on it, so I think the two can run parallel very comfortably.

I think that's probably over my time, but in any case I'll put myself at the disposition of the committee.

The Chair: Thank you, Mr Gregory. Members of committee, the government side, the opposition and the NDP have about 14 minutes each to ask questions. We'll start with you, Mr Kwinter.

Mr Kwinter: Thanks for your overview of the technical aspects of the bill. I have a couple of questions.

I'm totally supportive of the idea of being able to conduct business electronically and enter into contracts. The concerns that I have are the technical aspects of it. To give you an example, you hear of these viruses and people say, "Don't open up this particular folder or you'll wipe out everything that's in your computer." When you talk about the requirement that this information must be retrievable and we're in a situation where somebody comes up with some mischievous way of wiping it all out, how do you deal with that? I'm talking about it from a legal point of view.

Mr Gregory: I think the vulnerability of electronic communications is one of the most serious questions that people are going to have to ask themselves when they decide whether they're going to conduct their communications electronically or not and store their data electronically. I don't think there is a legal answer to that in the sense of can you provide against that by statute.

If I want to be able to prove something later, which is the usual function of having something in writing—whether it's prove in court or simply prove to the satisfaction of me and the people I'm dealing with what

the deal was or what we have agreed on, what we're each going to do—if I'm going to prove that later and I keep my documents electronically, then I'm basically responsible for figuring out how to keep them secure against that kind of virus. If I can't do that, then maybe I should keep my important ones on paper.

I don't think we can spell out for people any particular technology to do it, but if they are unable to keep it, then they are going to be at risk. I think that's why people have disaster recovery systems. They have backups off-site. They have various ways of protecting. They have firewalls of course against viruses and anti-virus protections and so on.

If people are going to keep records—these could be records communicating electronically or they could be the records that we are already producing, because very few things that are now printed or typed or whatever are actually generated in any other way than on word processors and there is an electronic file somewhere; so the existing files as well as those that are communicated between parties electronically—they are going to have to develop and maintain a reliable system against viruses and corruption over time and someone walking by with a strong magnet as well as against unauthorized access if somebody goes in and starts tampering with them.

The people who are keeping them are going to be at risk if somebody destroys them and they're not going to be able to prove it, so people may well want to print out their documents. We certainly hear of a number of companies where they'll say, "Oh, we've gone totally electronic. We don't have any paper any more except in our legal department." There's a reason for that besides the natural conservatism and suspiciousness of lawyers, which is that we want to be really sure about this and we don't trust our techies to protect us.

1040

So I think it's a serious question. It's a question that comes up with record retention as well and the archivists—you'll be hearing from some of them this afternoon, I guess—where you say, "I want to maintain this for six years or 10 years," or with archives it could be a lot longer, but are we going to be able to read the stuff later anyway, whether it's a virus or simply that we're now with WordPerfect 10 or whatever and I can't read WordPerfect 1 any more or I can't read WordStar or AmiPro or any other of the "dead" word-processing programs? What do we do about that? As I've told them when they've asked me that kind of question, fortunately, that is not a legal question. There's nothing much the law can do for them on that, but if they don't think they can keep these documents, then they'd better keep them on some medium other than electronic; maybe they'd better keep the paper.

That's another reason why the consent provision is so important. The consent provision allows me to say, "I don't trust this stuff. I read too many stories about viruses. I read too many stories about people who accidentally hit that little button over in the corner and they didn't know what it did, but it turned out that it

deleted everything you'd done for the last while. I'm not going to go there; I'm going to keep my stuff on paper. I'm going to print out my contracts."

It's a serious question. I don't think there's a legal response, but I don't think the legal response is let's not make them legally effective because it would encourage people to do things in an insecure way.

Mr Kwinter: One of the other concerns I have is that you talked about these various other statutes through the Ministry of Consumer and Commercial Relations and various other things where you're saying, "We're not going there, because they cover it." The main purpose of this bill is not to provide electronic communications; it's to provide for the legality of those electronic communications. The concern I have is that I think we really have to make sure that all of these aspects are covered in one bill and not say, "Well, we've covered that somewhere else," because unless you know that it's covered somewhere else, you don't know it. One of the concerns I have is that Saskatchewan introduced their bill and then immediately had to introduce another one because they found out there were shortcomings. Again, there seems to be ample precedent. The United States federal government, lots of people, have looked at this problem. It's just really a question of—and I know you can't cover every single eventuality—whether we are able to learn from all of these other jurisdictions and make sure we have the most comprehensive bill that we can, one that will address as much as we can.

Mr Gregory: I think to some extent the answer to that is that one size doesn't fit all. Programs will have their specific requirements that they'll have to spell out to say, "All right, when you're dealing with us, we need this rather than this," because they need more security. My examples are drawn largely from the Ministry of Consumer and Commercial Relations, where they have business names registration. If I have a company called 1234567 Ontario Inc and I want to carry on as Gregory Enterprises without that being my corporate name, I have to register something as a business name so that people can say, when they see Gregory Enterprises on my truck that runs them down or goes through their store window, "Who the heck is that legally?" They can find out that legally it is 1234567 Ontario Inc. So I have to file that. What I used to do was file a little card saying that, a five-by-eight card with an appropriate fee attached for filing it, and there it is on the register.

That ministry asked, "What are we going to do about doing that electronically? How are we going to get those things signed?" They decided, "We're not going to get them signed, because we never look at those signatures and we never go behind the signatures and it will be signed with some scrawl that we may or may not be able to identify." But it doesn't really matter, because there's not much in it. There's no public benefit; there's no public legal status that you get by putting that in. It's simply a notice requirement.

On the other hand, with a Personal Property Security Act file which sets priorities between bankers and

creditors and so on on certain assets, it's more important. On those ones, again, they don't have a signature but they have a system where only authorized users are able to file it so that they know where it came from. But again, it's a notice; it is not the actual document. The agreement between the creditor and the debtor is not on file electronically; it's back in somebody's office. It's only the notice, but the notice is traced in a way that the business name registrations aren't.

Take the next step, for land transfers, which is very important, where I am transferring, where the public record of the transfer is who owns the land, and a paper document that's contrary to it is invalid. The electronic prevails over the paper in the Teranet system. That one has a ton of security and a ton of rules and regulations about who gets to do it. The electronic security is much tighter because there's more value. So there's one ministry with three different programs—business names, personal property security, and land transfer—with three quite different security systems and legal structures behind it because there are three different purposes, three different risks and rules. So I don't think we're going to have a single system.

One of the challenges of putting it all into one piece of enabling legislation is simply the time it would take to go through all the laws and basically negotiate between the Ministry of the Attorney General carrying this project and every other ministry of the government to say, "All right, could you bring your commercial registration act into ours? Could you take your three sections out of the Highway Traffic Act that deal with electronic vehicle ownership records and move that into our statute?" It would have taken a long time to do that, and we thought it would be faster just to say, "Let's cover what's not now covered and enable them." We are working administratively to ensure the standards are as consistent as possible technically, partly so that the government ministries can talk to each other electronically and deal with the public so the public doesn't have to have four different kinds of software to deal with the government electronically and start to create a lot of difficulties, but I don't think we can harmonize it.

I don't want to take up other people's time, but the main thing Saskatchewan did when they withdrew their legislation and put it back in—originally they did an Electronic Filing with Government (Documents) Act in 1998. What they did when they put their electronic commerce legislation in last Christmas, the Electronic Information and Documents Act, is that they did not deal with government documents at all. They said, "We've already got a statute on that." When they came back, they withdrew that act and put one in which combined the Electronic Filing with Government (Documents) Act into the Electronic Information and Documents Act and made one statute of it. Again, it's easier to find and then the relationship between the sections was clearer, but that was only that. They didn't combine it with their personal property security legislation, which they already had, which allows for electronics.

I could speak to the American one, but it might take too long. I don't think it works, frankly. It's not a success, in my view, American federal legislation, because it overrides more than it should and they're going to run into problems as a result.

Mr Kwinter: Do we still have some more time?

The Chair: You've got three minutes, Mr Kwinter.

Mr Kwinter: The other issue I want to address is the whole area of privacy and confidentiality. You don't really refer to it specifically because it's covered in C-6, and that's sort of a given. Again, there has to be some sort of continuity between not only the United Nations, the United States and Canada; we really are into a global economy and we have to have uniformity with the legislation so that you're not jurisdiction jumping, where you say, "Hey, we found this particular place that doesn't cover this. Let's put our business through there." You talked about that, when you're in Seattle and you're using Hotmail.

I feel the legislation here should address the area of privacy and confidentiality. I think there has to be a specific recognition that this is going to be one of the major concerns people have when they're dealing electronically. When they're dealing with hard copy, hard paper, they sign it and they send it by registered mail, "Personal and confidential." They have some kind of assurance, not absolute assurance but some sort of assurance, that this information is going to go only to the person it's intended for. Although there are always people who may open up mail that doesn't belong to them, it's not the norm.

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I really think there has to be that provision in the legislation that we're contemplating. For people who are wired now, this is just a matter of course; they do it. But more and more people are getting electronically literate; more and more people are going on-line. I think one of the major concerns people would have is, "I'm sending this thing off into cyberspace, and how do I know who's getting it?" There should be provisions in the act to address that. Can I have your comments on that?

Mr Gregory: There are two parts to that question. The first is harmonization of standards, the privacy rules, and the other is the legislative vehicle, should it be here in Bill 88?

The standards for protection of personal information and privacy legislation are in fact pretty uniform in the world. The Organisation for Economic Co-operation and Development, the OECD, developed guidelines back about 1980 which influenced a lot of our legislation, including FIPPA, influenced federal legislation and has influenced the Canadian Standards Association Model Code, the Quebec privacy legislation for the private sector.

Really the basic principles of data protection of privacy are pretty standard. The OECD has expanded those further in recent years. Bill C-6 was intended—except for the CSA code—to reflect those standards. The European Union's directive on personal information and

protection reflects the same standards. The proposals that are made by the Federal Trade Commission in the United States, for example, are based on the same standards. So I think the underlying principles are the same.

If you look at the consultation document that the Ministry of Consumer and Commercial Relations has published here, they're talking about the same standards. So the basic principles, what you have to do, that the person should consent to the information, they should know what it's being used for, the person who collects the information shouldn't use it for some other purpose without telling them and getting the consent to that, etc.—there are eight or 10 principles, depending on which version you look at—are all pretty consistent.

I don't think you are ever going to be able to prevent the existence of data havens as it were, places where they sort of ignore the law, but there are ways to not give your information to people. It's an evolving field.

The second question is, though, should there be something in Bill 88 about this, rather than something separate? There are a number of reasons that we didn't do that. One of them, again, is that we are trying to deal with the legal enabling of electronic communications, making it legally effective, where people consent to do it. If people don't want to consent because they're nervous about privacy, they don't have to, the same as they don't have to do it if they're worried about viruses or if they're worried about simply, "I don't know what this stuff is. It's going to disappear. I'm going to mess it up." For good reasons, bad reasons, sensible reasons, whatever, they don't have to deal with it, but we want to make it legally effective. We're not trying to solve all the problems.

We are dealing with electronic communications. One of the big threats to personal information has nothing to do with electronic communications; it simply has to do with the maintenance of the databases. All the Visa transactions that are done are sitting in banks' databases. They don't need Bill 88 for people to keep it. They take the information off my little paper slips that I sign in the restaurants and at the gas station and various places where people sign Visa, MasterCard, American Express or whatever paper. That information is given on paper, but it nevertheless turns into a database. The question is, what are they doing with their database, whether they collect it electronically or on paper.

The Chair: Mr Gregory, I'm going to have to ask you to sort of wind up or down.

Mr Gregory: Sorry, Madam Chair.

So that's a question which doesn't deal with the subject of Bill 88 but which needs to be dealt with possibly in privacy legislation, which is where MCCR is going with it.

The other thing I should say is that by most surveys I've seen, about 80% of electronic commerce is done business to business and doesn't deal with personal information at all. We're trying to ensure that those people can relax, are given some more legal certainty about the effectiveness of their communications. So it

doesn't apply to personal information at all, but it deals with the legal effectiveness of the communications.

Mr Martin: I wanted to follow up a bit more on this issue of privacy, because it is one of the key issues where this piece of legislation is concerned. I think we need to have more assurance than the comment you just made that the privacy issue will be covered by whatever the Ministry of Consumer and Commercial Relations comes up with.

I know that the ministry is into, or is intending to get into, some public discussion about this; there was an announcement a couple of weeks ago that that's going to happen. But given that the complaints last year in the area of e-commerce increased by some 1,000%—that's what we're told—do you not think it makes more sense to have a more coordinated process here that would see us not moving as quickly as we are proposing, perhaps, to be into clause-by-clause by the first of October and to in fact be waiting to see what the Ministry of Consumer and Commercial Relations comes up with in terms of privacy, so that we do this right from the beginning and not expose anybody any more than we have to to the possibility of misuse of their information or to be abused in some way?

Mr Gregory: Obviously the timing of different pieces of legislation or possible legislation is up to the Legislature, but there are a number of arguments for proceeding with Bill 88 as it is, without trying to tie privacy in. Privacy legislation is very complicated. If you try to read Bill C-6, part 1, on privacy, it is not an easy read for a number of reasons, but one of them is the complexity of the subject. If you look at the draft legislation that was proposed for consultation by the Ministry of Health on health information privacy and protection a couple of years ago in Ontario, again, a very complex document because of the nature of the subject. It's not something that is simplifiable.

So the timing could be difficult. Certainly you risk slowing down the current legislation considerably, but that's up to the Legislature. From my point of view, I see them as two related but quite separate initiatives. Saying you may do something electronically and it is legally effective, even in the face of a writing requirement or a signature requirement, or if I do a contract with a Web site and click "I accept" and it essentially goes to some robot at the other end—because there is nobody sitting behind the Web site at Chapters or Amazon.com taking my order; it's simply a computer program—to say that it is legally effective is a big step forward and very helpful both to the individual and to the business that is doing that kind of communication, whatever happens to the personal information.

If personal information needs protection in the private sector, and certainly there is a lot of pretty good argument that it does, then it needs that protection wherever it is collected from, however it is collected and whatever is done with it. But it doesn't help that protection, it doesn't promote that protection to say, "Meanwhile we're leaving you uncertain as to the legal effectiveness of

communications"—including, as I said, a lot of business-to-business communications, but even business-to-consumer communications or consumer-to-government communications—to say, "We are leaving it open. We're not telling you whether these are legally effective and we're not telling you how to do it."

One of our experiences in developing this legislation within the government is to have a lot of other ministries come to us and say, "We want you to be doing this. Otherwise we have our own plans for legislation, because we need to authorize our own programs that we're doing electronically. But if you do it in a generic piece of legislation like Bill 88, we won't have to amend whatever act to do it." That is one of the big benefits of doing it, for the purpose of government: to avoid adding to the constellation of different authorizing statutes that Mr Kwinter was talking about. There are a number out there, and we're not trying to say, "Bring them into the fold in this bill," but we do want to prevent their proliferation by saying, "This is how you do it." So for both government use—and of course government use is already covered by FIPPA and MFIPPA, so there is already privacy protection—and for private sector use, I think it's important to get on with it and say, "This is legally effective if you do it this way. If you get personal information, then you may have other rules that apply to you."

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It has certainly been the experience in the States as well as here—there seems to be more information about what goes on in the States—that people are refusing to deal with business Web sites that don't protect information. There's a lot of concern and growing sophistication about how you protect your personal information, or saying, "If you don't persuade me you're protecting my personal information, I'm not doing it." Of course, our Bill 88 is based on the same consent provision: "If I don't want to deal with you electronically because I don't know what you're doing with the data about me that I would be giving you, then I'm not dealing with you electronically. So persuade me."

There's a lot of private pressure on people to conform, but there is increasing legislative pressure both through Bill C-6 and through MCCR. I think they're separate concepts although they're not completely unrelated.

Mr Martin: So what you're saying, in effect, is that because actually moving and trying to get a handle on and to be doing something parallel on the area of privacy is very complicated and sophisticated, we're in fact not going to do it, we're not going to put the effort and the time and energy into doing that. That would seem to me to be somewhat disappointing, and I'm sure, for folks out there who at some point will find themselves caught up in this, quite troubling. Whatever we do as government, because we're giving leadership and laying out the groundwork, the framework within which a lot of this will happen, it behooves us, from the very beginning, if we recognize that there's a difficulty or challenge, to move to respond to it.

If what you're saying is that it is just too sophisticated and complicated to do it now because we want to move this through quickly and get it done, that to me would be a huge problem and a huge mistake.

I want to also just ask you a question—again tied into a question that Mr Kwinter asked you—about this business of trying to harmonize the various pieces of legislation. I was in Ireland in late June of this year, and certainly there's a country that is moving very quickly and aggressively into this whole area. Given the world out there that we're working in, it seems to me it would be intelligent for us as a country to try to harmonize, not only within our own jurisdiction but with the various provincial statutes that are out there where this is concerned, and also to harmonize what we're doing with the federal government so that no matter where you go in Canada at least there's some familiarity and continuity, and when we deal with the rest of the world—and a lot of what we do by e-commerce now is outside of our own jurisdiction—at least to have some common vehicles within our own country.

Is there any effort being made, as we move with this Bill 88, to conform with what's going on? I know you said that within our own jurisdiction we're not doing that; we're putting this in place and then I guess we'll deal with whatever evolves from there. But is there any effort being made to conform with other jurisdictions within Canada and with the federal government itself?

Mr Gregory: Two things: One, if I may comment on your interpretation of what I said to the previous question, I did not say we're not going to do this because it's too technical. I said there are two different conceptual areas. One is legal certainty of the effectiveness of legal communication. The other is what you do with the parts of that information that may be personal information. That is being worked on separately, but there is no reason—and it's not even a half a loaf is better than none. It's probably, given that 80% of communications is business to business, that consumers in the other 20% are going to want legal certainty.

If I order a book from Amazon.com, I bloody well want them to send me the book, not to say, "That's not a binding contract because it wasn't in writing." So maybe 90% of a loaf. Let's have the legal certainty about the communications and the transactions, and what they do with the personal information is a separate issue. So it's not a matter of the government not doing it; on the contrary, the government is doing it. The government has a consultation document going on; you can read what it says.

On the conformity side of it and the standardization, in fact this is a harmonized body. I've read the Irish document. If you read the Irish statute that they passed this year, it's very consistent with the United Nations model law. There's language that looks very much like Bill 88, and like the American uniform act, like the Australian, like the Singapore act, like the Indian act that was introduced this year, because it's all drawing from the United Nations work. Everyone is very aware of the

globalization, and as you say, you should be able to have the same expectations wherever you are that if I create an electronic document that has certain characteristics, it will be legally valid in those legal systems. We're doing that. Within Ontario, one of the major purposes of this legislation is to harmonize so that every ministry won't pass its own legislation.

Certainly we've been pushing within the ministry within the last year or so to say, "Don't legislate on this because we're going to," and we've got a number of ministries that say, "OK. As long as you do within a certain reasonable time, we won't put in our legislation about electronic communications for our particular program." It's one thing to say that from here on we are going to have harmonized standards that are not only harmonized within Ontario but are internationally consistent with what's going on elsewhere. It's another thing just to go back and say that for the last 15 or 20 years various ministries have been passing various things in their statutes about their programs and we're going to make them all conform to this standard. That is a very different operation. It's not to say that won't be done over time; I'm sure it will be. In fact, over time I think everybody's going to be using off-the-rack, over-the-counter software and hardware for a lot of their purposes. There are a lot fewer word processing and spreadsheet programs around today than there were in 1980 or 1985 or 1990. Standards are becoming more accepted and more global, and government buys it off the rack the same as business buys it off the rack, the same as consumers buy it off the rack. What I have at home and what I deal with in my bank and what I have at the office tends to be the same software.

Standardization is happening, but to say we should hold up this until we can persuade every other ministry to change the way they've done things for their programs—and their clients, their customers and the people they deal with are all used to their programs and have all bought software and whatever to deal with it—to say they should change that or not to pass our legislation until they get there I think is maybe an ideal situation but I don't know if it's a real one. I don't know of any other jurisdiction that's done that.

The Chair: Two more minutes, Mr Martin.

Mr Martin: You made a comment that there is no discrimination based on medium, and I think I understand what you mean by that, in that one doesn't supersede another. But—and this may be a political question at the end that you may not be able to answer, but at least I want to ask it—by moving now in this way into the area of e-commerce and making it sort of the norm, or at least enhancing it so it's a possibility that it will become the norm, I suggest that there will be some discrimination. It will be discrimination against those who cannot participate because they don't have the hardware or the knowledge or the access.

I tried to talk the ministry into taking this piece of business into the north, for example, where a lot of smaller communities are being hammered because those

few people who do have access are now buying by computer and so small businesses in those communities are finding it difficult, given that their margins were so narrow in the first place. I guess I'm afraid, first of all, that they won't understand the impact of this on their local economy and won't be able to respond to it because we haven't gone in there to talk to them about it, to educate them, to raise their consciousness around this. Ultimately, in the end, if some of the businesses that are there close down because they don't have the level of business any more that makes it profitable for them to continue, then these folks will no longer have access to some of the materials that the folks on the Net will have. Any comment on that?

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Mr Gregory: I think the question of access and comprehension is a very important one. I know that the Ministry of Energy, Science and Technology and the Ministry of Economic Development and Trade have both been working on programs to expand the access to communities outside downtown Toronto or outside the main communications networks.

There is no question that there's a challenge. There's also an opportunity in there, but it's not really a Bill 88 question. Making the legal consequences of using this communication certain rather than uncertain I don't think disadvantages them. It may well allow the people in remote places to get information that will help them be competitive.

As someone put it once, we're importing customers. By putting our wares out into an electronic universe it reduces some of the economies of scale. But on the other hand, you do have to know more or less how the system works. So there are two sides to that coin. But the whole economic development and regional equality or equalization program is not the agenda of Bill 88, which is not to say it's not an important agenda; it is.

The Chair: We'll turn to the government side.

Mr Martiniuk: First of all, Mr Gregory, I'd like to congratulate the ministry and yourself for meeting the concerns, as I understand it, of the privacy commissioner and others in regard to this legislation.

My good friend and colleague John Hastings, member for Etobicoke North, presented a bill which passed second reading and was referred to this very committee, as a matter of fact. It unfortunately did not meet some of the privacy concerns, even though I understand it was based upon the Uniform Electronic Commerce Act. I would like you, for my purposes, referring to specific sections of Bill 88, to point out where you have met privacy concerns where the bill presented by the member for Etobicoke North was deficient.

Mr Gregory: "Deficient" might be putting it strongly, but there are certainly places in Bill 88 where the government amended what we had as our draft, which was, as I said earlier, based on the uniform act that Mr Hastings's bill was based on. We amended that to meet some concerns of the Information and Privacy Commissioner. There were a couple that dealt with

matters of access and matters of consent but didn't really deal with privacy as such. In section 15, for example, which is on page 7 of the printed copy of the bill, we've put in subsection (4). Basically, that prevents government from compelling people to go electronic if people are concerned about the threat to privacy, as Mr Kwinter and Mr Martin have suggested—are we encouraging people to do something that is more risky? I think that is one of the concerns expressed by the Information and Privacy Commissioner as well.

Section 15 generally authorizes public bodies like government to deal electronically and it repeats the consent provision, which is one of the main protections you have about going somewhere you're not comfortable going. "Nothing in this act authorizes a public body to require other persons to use, provide or accept information or documents in electronic form without their consent." That basically reflects the general consent provision of section 3, but it's specifically tied in to government uses.

More specifically with privacy, you have section 27, dealing with the application of the act. This is the one I mentioned earlier, saying we do not override FIPPA or MFIPPA.

"Nothing in this act limits the operation of the Freedom of Information and Protection of Privacy Act," the equivalent municipal statute, "or any other provision of law that is intended to protect the privacy of individuals," which is your question, Mr Martiniuk, or "provide rights of access to information held by public bodies or similar entities."

Subsection 27(2) really goes to protecting access rights rather than privacy. Section 29 deals with biometric information specifically, and carves out biometric information from the universe of information that might be communicated electronically. It says:

"This act does not apply to the use of biometric information as an electronic signature or other personal identifier, unless another act expressly provides for that use or unless all parties to a transaction expressly consent to that use."

You can't use the implied consent rule to justify the use of biometric information, say as an electronic signature. You'd have to spell it out very clearly: "This is what you're doing. Do you agree?"

The commission certainly took the view with us, and we were prepared to accept it, that people are particularly nervous about biometric information—finger-scans, iris scans and things that are part of your own body, the way you do things personally—and people are nervous about giving that up. So we're saying: "You can't use the general authority of this act to do that and sort of slip it in on somebody. You have to spell it out."

Those are the main provisions on privacy that were not in Mr Hastings's act and in fact a couple of them that make us not uniform with other provincial legislation. I know that in British Columbia they did speak with their equivalent privacy commission and that body didn't ask

for the kinds of amendments we gave, but Saskatchewan and Manitoba did not make that kind of provision.

Mr Martiniuk: Thank you, Mr Gregory. My friend Mr Beaubien has a question.

Mr Beaubien: Mr Gregory, I'd like to go back to Mr Martin's question because that's where I'm concerned. The concerns I have with this bill are on the potential discrimination, the lack of accessibility for people in northern and rural Ontario and certainly the impact it potentially could have on the competitive aspect.

Let me paint the scenario for you that there are many municipalities in Ontario that will not be able to access the competitive advantage this bill may provide to some businesses, individuals or whatever the case may be. I don't feel the same way Mr Martin does. I think people in northern and rural Ontario understand the system. The only reason they can't use it is because they cannot access it. The fibre optics are not there, the infrastructure is not there.

Let's say this bill receives royal assent on November 25. From a legal point of view, what is your opinion if somebody comes from northern or rural Ontario on November 26 and challenges the government as to the competitive disadvantage they may have with regard to this bill? Where does the government stand?

Mr Gregory: I think the answer from the point of view of the Ministry of the Attorney General in saying, "Here we have Bill 88 which we have now passed," in your hypothesis, is to say, "This act reduces legal uncertainty about the impact of these communications and the effect of these communications." It is not regional economic development legislation. So the people in northern or rural Ontario who say, "We need the infrastructure," or "We need the education," or "We need the facilitation here so that we can use this material which can give us a competitive advantage, but only if we're connected at sufficient speeds and have sufficient services in support"—that is a different part of the government that should be doing that.

I think it is a perfectly fair question, and the government as a whole needs to be able to answer that question: What are you doing for the people who don't have the facilities they have in the big population centres? But it is not an answer to that absence to continue the legal uncertainty about the effect of these transactions. If I have a writing requirement, whether I'm in Lambton county or northern Ontario or downtown Toronto, I need to know how that writing requirement is satisfied electronically, and Bill 88 will help me answer that question. It's a separate question of: I can't get a fast Web site in Grand Bend because I'm working with the local communications system and it hasn't got the infrastructure yet. That's a serious question, but it doesn't—I don't think delaying giving legal certainty about communication is a way of solving that problem. That is a different problem which Bill 88 can't address.

Mr Beaubien: I'm speaking on behalf of my constituents, because some of them would be able to access the potential benefits from this bill while others wouldn't.

I know my friend Mr Kwinter always told me we're all born equal. Sometimes I wonder whether that's true or not, because the more we delve into some of the new technology, and I agree that it's difficult to service all areas of the province, I think there's an element of unfair competitiveness for some people. I think they are placed in an undue, unfair, disadvantaged position because some people in Ontario have the infrastructure available to them. From a legal point of view, I don't know; I'm not a lawyer. But I'm sure, as you pointed out in the opening statement, that lawyers will always figure out a way to put their case or their point in front of a court, in front of a judge, in front of anybody. So, from a legal point of view, it does create some concern as far as I'm concerned.

Mr Gregory: I know the federal government has an e-commerce or an electronic commerce strategy, and one of the messages in that is very much, let us have everybody wired, let us have universal access for exactly that reason. As I said to Mr Martin and Mr Kwinter, it's a very valid point that you have to equalize that opportunity. From the point of view of someone looking at Bill 88 and saying this will answer some legal questions about whether or not this is legally effective, I don't know how that vehicle can be made to carry the regional economic development weight. There's a lot of work being done by the government to ensure Internet access to the schools, for example, so that people, wherever they go to school in Ontario, are actually familiar with the concepts and the vocabulary in a way they wouldn't be without that kind of initiative.

There are smart-communities projects going on with federal and provincial money in them to help develop that kind of thing. I think it's activity that needs to be done, but from my point of view, as someone responsible for a bill that essentially gives legal effectiveness to communications, I don't think not doing it is an answer. I don't think the government is legally exposed to a challenge saying, "What you have done is invalid because it affects the people in rural or northern communities differently from the way it affects people in the downtown Toronto or Ottawa because of the infrastructure available to them." I don't think it's legally challengeable for that reason. Politically or socially it may well be challengeable, but that's a different question.

The Acting Chair (Mr Gerry Martiniuk): Mr O'Toole, you have only two minutes.

Mr O'Toole: I'd like to thank you for bringing this forward and also, it's been mentioned, Mr Hastings. I also want to comment as the parliamentary assistant to the Minister of Consumer and Commercial Relations. I'm sort of familiar with the discussion paper that's out there and, as you said, it is a kind of cross-ministry issue on the whole issue of privacy. I think the privacy issue has been addressed in our briefing notes as well, that the Privacy Commissioner said she is comfortable with the bill in the form it has taken after discussions with your office. So at least we're cognizant of it.

But I guess it gets to the bigger issue of risk in whatever forum or format it takes place. It would be wrong to assume that information in another format is more secure. Certainly, having worked in procedures and that area with a large corporation, information is accessible in paper form and, I suspect, most recently in the news you had Jane Stewart, HRDC, the income tax information database which was exposed to be at some risk to privacy, and there are all the resources of our federal government exposed.

Quite often in the House, not to be flippant here, the opposition and the third party introduce what they wave around as a leaked document, whether it's on environment or finance, saying that they have information which relates to—and most often this is in paper format. So it would be wrong to start with the premise that what we have is perfectly secure. I think the risk is most important in this format. I think the option of the consumer being able to opt out is very important, and their ability to interact and how they interact I think are widely protected by the biometrics; the lack of requiring that to be a component of the electronic signature is very important.

But then if I look at the broader issue of the document as I see it, and it's consistent with the United Nations piece and the American jurisdiction and other jurisdictions that have addressed this, the importance, for the right reasons that I think Mr Kwinter mentioned, is that in the e-world having harmonized standards is absolutely critical so that our systems are compatible. For example, a very controversial area would be health care. We're probably dealing with that as we speak; I know that somebody in some ministry is dealing with that issue of the smart card technology. Take, for instance, the idea of organ donation and organ transplants. There's a sort of preeminence of the collective good that somewhere has to enter this argument without risking people's privacy. I'm sure that the protocols, whatever they are, whatever system—there's always the risk of invasion, whether it's hackers or other misusers of information. I don't think we're there yet. I think we'll be talking about this 10 years from now, personally.

I just want to wrap up. All of us feel vulnerable, when we log on anywhere, that some trace, some fingerprint, some footprint, some e-print is left regardless—

Mr Beaubien: DNA.

Mr O'Toole: —a DNA kind of footprint, if you will.

This is more empowerment legislation for B2B transactions to take place in a legally conforming way. Would you say that's about as far as it goes? As to the other subordinated issues, I'm sure we'll hear much about that with Minister Runciman's discussion paper. Just a quick comment.

The Acting Chair: I'm sorry, Mr O'Toole, but we've gone over two minutes. You took four minutes for the question—

Mr O'Toole: That was the preamble.

The Acting Chair: —and there's no time. We're running behind. I apologize to Mr Gregory. I'm sure he

had an answer for that rather prolonged statement. However, thank you very much, on behalf of the committee, Mr Gregory.

We are running behind. We have 20 minutes per party in regard to remarks, which would take us over into the lunch hour. We're returning here at 1 pm, so be guided accordingly. However, there is an allocation of 20 minutes per party.

Mr O'Toole: Mr Chair, I would ask, if we could have unanimous consent, that we move it down to 10 minutes, unless we want to pontificate for an hour or something.

Mr Kwinter: I have no problem with that at all.

Ms Marilyn Mushinski (Scarborough Centre): I have no problem.

The Acting Chair: The third party is not present, but two of us are in agreement.

Mr O'Toole: Great. Thank you.

Mr Kwinter: Mr Chair, if I could, I just want to reiterate some of the points I made in my questioning and tell you where we are as an opposition party. We are certainly supportive of this bill in principle. We think it's important and we will be supporting it. Having said that, I do have some concerns and I just want to make sure the government side in particular understands the concerns.

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One of the areas I'd like to talk about very briefly is one I didn't get a chance to ask Mr Gregory about because we ran out of time. This bill is basically enabling legislation to enable transactions that take place electronically to be recognized in law. It is not meant to go in and totally restructure how we do business and economic development and all of those things. That's got to be done somewhere else. But it really does provide legal certainty that if in fact you are conducting your transactions electronically, it will have the same legal force as it would have if it were done with hard copy on paper, and because of that there are some problems. I just want to refer briefly to what Mr O'Toole was talking about, where people leak documents or when things happen. There are provisions under the law to address that. If you break into an office and steal documents, break and entry; if someone transfers documents illegally, you can call in the OPP to do an investigation and do something about that. I don't know whether or not there are provisions under those criminal statutes to deal with somebody doing that electronically.

The more significant part of that is that usually there is a cause and effect: somebody breaks in because they want something; somebody transfers or leaks a document because they have a particular grievance with somebody, and that happens. But there are more and more instances where you have these young people who grew up on computers at the age of 18 months and two years who are hacks and they do it for the fun of it. They do it to see if they can do it. They do it to see, "Can I actually access the Pentagon records? Can I do that?" Every once in a while a story comes out where someone has in fact entered that kind of documentation.

The purpose of my bringing that up is that if you give enabling legislation to allow it to be done, then I think you must also provide penalties if someone abuses it. That is not someone who, as I say, is knowingly trying to send information they have been given in confidence and that they subscribe to under whatever privacy and confidentiality statutes there are, but if some party out there, for whatever reasons, decides they are going to be mischievous, they are going to access this documentation, and they figure out a way to do it. Notwithstanding assurances that everybody has all of these safeguards to ensure their documents, we know that any time somebody does something, there is someone else who will find a way to get around it. It would seem to me that none of the legislation I've seen deals with that. I don't have an answer to it. I just wanted to make sure I raise that issue.

The other thing I still have concerns about is to make sure that every effort is being made to address all of the technical difficulties with this kind of legislation: the fact that it's got to be harmonized; the fact that there are concerns and that every time you think you have it settled, someone brings up another one. Maybe during the presentations that are being made during the tenure of this committee, we'll hear some of them. I am hopeful that the minister and the ministry and the government side will be cognizant of these particular potential problems and make sure we do it right the first time. I don't want to be in a position where we are like Saskatchewan.

Without trying to be partisan, we've seen this happen within this government's tenure. They introduce a bill, they find that it was introduced in haste because it seemed to be a requirement that we have to do something, the bill gets introduced and suddenly everybody says, "Why didn't you do this? Why don't you do that?" They say, "We'll have to withdraw the bill and we'll bring it back again." Then it happens once, twice, three times and sometimes even four times. I'm just suggesting that there are overriding statutes, certainly with Bill C-6, that give a certain amount of legality to electronic transactions, and basically what we're being asked to do is to make sure that the provincial statutes, where there is provincial jurisdiction, conform to that particular legislation. I think it's important that we really take a look to make sure that when we do it, we do it as right as we can. We'll never do it absolutely right because this is a moving target and there is new technology emerging every day. This is a work in progress. It's going to have to keep evolving, and as these new technologies come up, we're going to have to make sure that our legislation is able to deal with that.

Then of course I still have some very serious concerns about privacy and confidentiality. Notwithstanding that there are provisions in C-6, I think it's important that they be incorporated into this act. I think it's important that this act can stand alone, that it isn't necessarily dependent on other jurisdictions' legislation and other people's responsibilities. I think there has to be a

statement, there has to be an assurance that people who are dealing electronically have a certainty that what they do is confidential, what they do respects their privacy, as data, whether it's biometrics, which is specifically addressed, but that personal data that may not be necessarily under the category of biometrics is protected and that people understand that when they deal electronically they have that assurance.

In the interests of time—and I know we're going to cut it a little shorter—I just wanted to make sure I put that into the record, and again, we will be supporting the legislation.

Mr Martin: I hope you will be somewhat flexible if I go just a wee bit over in that I've put a lot of effort into preparing for today and would like to put on the record as much as I possibly can.

In light of this bill, I think first and foremost we need to make sure we have consumer protection to ensure privacy rights are not violated and to protect against e-fraud and cybercrime. Regulation is one thing; enforcement is another. We need a third-party watchdog that has the power to investigate e-complaints, press charges and enforce the laws. Consumer protection rights ought to be real and enforceable, not virtual. We need to make this consumer-focused, not business-focused.

Minister Runciman has suggested the term "consumer" be expanded in this context to protect small businesses. I agree. Small business should be protected under separate legislation that combines protection with accountability and specific guidelines. Business owners and consumers are two separate entities, and this legislation should maintain that separation.

Recent studies show e-commerce has been a bust in Canada. We need to consider the reasons for this: lack of trust among consumers for e-commerce as well as lack of coordination and accountability for business initiating e-commerce transactions. Proper e-commerce legislation should protect the consumer from abuses, as well as outlining clear, specific rules for business use of e-commerce as a marketing and sales tool. Consumer complaints about e-commerce have risen by 1,000%. We need to know those complaints are being investigated swiftly and with assurance. We also need to know that consumers have legal recourse.

Privacy protection should be key in e-commerce legislation. It should be illegal, period, for any company to share your personal information for marketing or any other purposes. Buying goods via Internet should not in any way be a licence for business to exploit the use of your personal information. Consumers should not have to fill out a form saying they do not want their personal information shared. It should be embodied in the law that such information should never, under any circumstances, be shared unless under police investigation.

We need to develop regulatory frameworks for cybercrime, e-commerce and the social and economic impact of the digital revolution. We need to set up a body to review the impact of any e-commerce legislation within three years of its enactment. E-commerce is a new

beast, and we need to make sure that any legislation speaks to the reality of this new concept.

On a social commentary note, we need to recognize that e-commerce represents a small fraction of how most Canadians do business. Many low-income Ontarians are frozen out of e-commerce because they do not have the money to buy a computer and surf on-line, many businesses do not have the resources to set themselves up in e-commerce, and jobs could be jeopardized if we tried to turn the real economy into a virtual one.

The real economy is where the majority of consumers do business in Canada and it will remain that way for a good long time to come. While we need to make sure regulations and enforcements are in place for this new way of doing business, we should not fall into the trap of overvaluing e-commerce over real commercial transactions. Also we need to consider the impact of developing a dot-com economy that further deepens the divide between the rich and the poor. The whole debate on e-commerce centres around maximizing the consumers around this new technology and keeping up with others, companies, countries, in growth. We need to be thinking further ahead to the impact of a growth-based society on the environment and we need to look at the very real problem of jobless growth. With greater and greater use of new technologies, we need to have some broader discussions about how we can help the economy produce jobs.

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By way of some background now, Stats Canada released a benchmark study on August 10, 2000, that found that e-commerce has been a complete bust for the Canadian economy so far. This was the first ever study in this area by StatsCan. Internet sales in Canada are just a fraction of total market activity. Goods and services ordered by Canadians on the Internet in 1999 represented only 0.2%, or \$4.4 billion, of total economic activity. In other words, out of every \$100 of sales in Canada last year, Internet sales accounted for a mere 20 cents. The study was based on a survey of 23,000 private firms and public organizations between October 1999 and March 2000. The leading sectors for Internet selling of goods and services were the information and cultural industries: 20% of business in these areas used the Internet. Next in line was the private educational services sector, at 17%. In contrast, only 1% of companies in the forestry, logging and supportive activity sectors did so.

Contrary to popular belief, more Canadian businesses are using the Internet to purchase rather than sell goods and services, suggesting stronger business-to-business Internet commerce in Canada than the continually talked about business-to-consumer commerce. This is especially the case in broadcasting, telecommunications and publishing, where more than half of all firms purchase services on-line.

Canadians are far less likely than American consumers to buy on-line: 0.4% of shopping was done on the Internet in the fourth quarter by Canadians versus 0.6% for Americans. Of those, the study found the majority of

on-line spending by Canadians is flowing to the US and other foreign countries. A different study by the International Data Corp Canada found that Canadians spent much more on the Internet, \$21 billion, than the Stats Canada study found, but the IDC study measured complete spending, not just spending in Canada, and the difference between the two studies could mean that Canadians are spending on e-commerce, but not in Canada.

As the Star outlines, for every dollar Canadians spend on the Internet in Canada, they spend \$3.77 on purchases on-line from the US. Canada's public sector is making more of an effort than the private sector to sell on the Internet. Business needs to catch up. If Canadian companies don't offer consumers virtual stores as good as those in California with the push of a button, Canadians will travel to the US to do their shopping.

The Star concludes that we are not keeping pace with the US in investing in new technologies. One US-based analyst warned that Canadian retailers better move quickly to attract consumers to their Internet sites or they could lose the electronic market to competitors south of the border.

Commenting in the aftermath of this study, analysts have concluded that Canadian firms have to get their act together if they want to stay competitive in the digital economy. They recognize that Canada is behind the US, but momentum is building to what they believe will become an economic tidal wave. The survey did not answer questions on how companies are doing with their returns on investment in e-commerce or whether e-commerce is lowering their costs. Questions of jobless growth certainly come to mind because of the technology involved in e-commerce.

Ann Cavoukian, the Information and Privacy Commissioner, said about e-commerce that it is based on the very technology that has led to a renewed concern around privacy for individuals—Internet technology. E-commerce will have to work with consumer confidence and trust because with competition only a mouse click away, trust will help win business. Growing numbers of Internet users are fibbing about themselves because they have serious concerns about on-line privacy. In a survey of 200 people in BC by market explorers they found that more than a third falsified personal data, and in a survey of 10,000 two thirds had serious privacy concerns.

These fears are affecting e-commerce because consumers fear being tracked on-line if they buy over the Internet. Companies need to provide upfront privacy policy agreements and compensation programs in order to motivate on-line consumers to voluntarily give accurate information. Some companies are clueing into this. YOUtopia and BizSmart say they are open about how the collected data will be used and provide comprehensive on-line privacy agreements. They also give away incentives such as being entered in a draw for a PalmPilot or collecting YOU dollars that can be exchanged for music, movie passes or clothing as you

use the site. It will come down to companies developing better, customized reward programs or services to entice users to share personal data. Just because there is a privacy policy doesn't guarantee a company will honour it. One example is Toys "R" Us, which has a privacy policy but forwarded personally identifiable information to a US marketer.

The federal government has passed a law, the Personal Information Protection and Electronic Documents Act, to come into effect in January, that would make it illegal for a company to go against its privacy agreement. Companies will have to get consent from the individual before collecting or disclosing personal information. Consumers have to be told what data are collected, how they're used and that they have the right to veto the sharing of data with third parties through an opt-out clause. But the law does not apply to non-identifying or anonymous information, it is not retroactive and it can't stop stuff that emerges from other countries.

As I mentioned earlier, Minister Runciman announced on August 10, 2000, that the government is planning to revamp the province's decades-old consumer protection laws and have legislation ready next summer. Consultation hearings will be held across the province in the coming months, and he says he is committed to public input. The government has come up with 14 suggestions to update the legislation that harmonize with federal and provincial standards developed last fall at a meeting of Canada's consumer ministers. It seems to me, if the Minister of Consumer and Commercial Relations is going to go out across the province for public consultations, that we should have done that as well with this bill, not limited ourselves to three of the larger areas in the province but willing to go to northern Ontario and rural Ontario.

He specifically mentioned the growth in e-commerce and the surge of complaints by people doing business on the Internet as necessary reasons for the revamp. Apparently, consumer complaints have increased by 1,000% in the last year in the area of e-commerce. Proposals include giving people the right to back out of a deal if the goods they've bought over the Internet are not delivered within 30 days and a 10-day grace period for people to back out of high-pressure sales strategies for real estate time-sharing deals. The problem will be, how can you get this law enforced outside Canada?

Runciman said he also wants to expand the government's definition of "consumer" to include small businesses because they are just as vulnerable to deceptive practices as those buying for their families, and I agree with that.

With on-line banking and on-line investing, I wonder if regulations are adequate to protect people against terrible financial mistakes. For example, the Bank of Montreal's direct investing firm announced on August 16 that it is offering fixed income on-line, a service that allows investors to search, buy and sell a wide range of fixed-income products such as bonds, treasury bills, debentures and coupons. They say the service is for

experienced investors and that they have on-line access to knowledgeable representatives to answer questions. There is a quick-picks function where the user identifies the amount of money he wants to invest and is presented with a selection of investment options. The investor line is part of the Bank of Montreal's private client group that focuses on wealth management.

The Chair: You have about a minute to wrap up.

Mr Martin: OK. As greater amounts of financial transactions and business can be conducted over the Web, do we unnecessarily expose people to greater risks of losing savings, fixed income etc if there is inadequate regulation and monitoring of these sites and transactions? With telephone advice, you are receiving information from qualified, certified financial planners, and there likely are monitoring mechanisms in place.

These are just a few of the concerns, with some background information, that we have as we work with the government on this piece of legislation. We think it is necessary to be moving in this direction but to be doing it in a coordinated manner that recognizes what is happening across the board in the various ministries that will be affected or have effect here, that we need to be doing it in co-operation with other provinces and with the federal government, and that we need to be taking the time, if it's necessary, even though it may be complicated or sophisticated, to make sure we have in place all those privacy protections that are necessary if this is in fact going to be a good piece of business for the people of this province.

The Chair: Thank you, Mr Martin. Mr Martiniuk.

Mr Martiniuk: Thank you, Madam Chair. As agreed upon, I will be less than 10 minutes. First, I would again like to recognize and congratulate John Hastings, the member for Etobicoke North, for showing the initiative in presenting his e-commerce bill, which received second reading and was in fact referred to this committee.

Bill 88 would encourage public business confidence by providing clear laws that regulate and safeguard consumer and business electronic transactions. This would allow business, including small business, to be as creative, modern and competitive as possible. Enhanced confidence in e-commerce provides opportunities for small businesses to compete more effectively than big businesses as e-commerce reduces the advantage of scale of existing plant and inventory.

Enhanced confidence means ensuring consumers are protected. By giving on-line transactions the same legal validity as traditional off-line transactions, Bill 88 would ensure that consumers and their electronic dealings are legally enforceable.

Bill 88 would ensure that consumers would receive directly any notices that have to be provided to them. Senders of notices would not be able to consider their notices as delivered to consumers by simply posting them on a Web site.

Bill 88 would also give consumers a right to get out of transactions entered by mistake with an automated computer. We believe this rule would encourage on-line

merchants to set up systems to avoid mistakes or seek confirmations before treating a deal as final.

Importantly, Bill 88 would give people the right to say no. It would not force individuals or businesses to go electronic. Simply having the capacity to receive an e-mail or a fax would not be enough to constitute consent. Bill 88 would also give people the right to say, "Yes, but...." In other words, people could set conditions for using electronic communications, such as using acceptable word processing or signature methods, or people could agree to using electronics for some kinds of documents, such as household bills, but not others, such as insurance policies.

Bill 88 would give each individual user of electronic communications the choice of what he or she is comfortable with. Security of information and protecting individual privacy is paramount. Bill 88 responds to input from the Information and Privacy Commission. For example, Bill 88 would not apply to the use of biometric information, which is based on measuring physical characteristics such as fingerprints and iris scans. That's "iris," not "Irish," Mr O'Toole.

Interjection: Close, though.

Mr Martiniuk: This information can be used if it is specifically authorized by any other legislation or expressly consented to by the individual. The Information and Privacy Commissioner has said that she is comfortable with Bill 88 in the form it has taken after amendments resulting from discussions with her office. Federal law also safeguards use of personal information used in e-business.

The Ontario Ministry of Consumer and Commercial Relations is consulting with the public on this issue in an Ontario context. They released a consultation paper on July 20 of this year, and you can submit comments to that ministry by September 15.

I believe that this Bill 88 does in fact protect and give confidence to the public and I am pleased to support it.

The Chair: Thank you, Mr Martiniuk. We will recess now until 1:30. We've had a cancellation, so we've moved the first delegation to 1:30. So see you then.

The committee recessed from 1154 to 1330.

The Chair: I call the meeting to order. Good afternoon, ladies and gentlemen. This is a continuation of the standing committee on justice and social policy to consider Bill 88, An Act to promote the use of information technology in commercial and other transactions by resolving legal uncertainties and removing statutory barriers that affect electronic communication.

ANDERSEN CONSULTING

The Chair: The first representative we have to address the committee this afternoon is Mr Paul Brown, senior manager of Andersen Consulting. Each delegation has up to half an hour for their presentation with questions. Good afternoon.

Mr Paul Brown: Good afternoon, Madam Chair, members of the committee. My name is Paul Brown and

I represent Andersen Consulting. Thank you for this opportunity to speak with you this afternoon and to support Bill 88, the proposed Electronic Commerce Act.

Attorney General Jim Flaherty has accurately observed that the future of e-commerce will, in part, depend upon consumer confidence and trust. The proposed legislation provides a much-needed framework of standards for electronic contracts, signatures and transactions that will greatly assist in securing that confidence and trust.

We believe it's an excellent first step and commend the government for recognizing that electronic commerce is global by nature and must conform to international rules and standards. The minimalist nature of this legislation is also a positive factor in that it recognizes the reality that the e-commerce marketplace is rapidly evolving and that we are seeing fundamental changes in consumer and commercial behaviour. Bill 88 is the beginning of a long process of legislative and regulatory change that is needed if we're serious about encouraging the successful evolution of the digital economy while at the same time protecting participants in what is largely an uncharted new marketplace, the new e-commerce frontier.

My colleagues and I are heartened to hear the Attorney General say that his government "places a high level of importance on the development of e-commerce in Ontario and is committed to seeing Ontario play a leading role in the development of the on-line economy." We too are committed to playing a leading role in the development of e-commerce in Ontario and have established a dot-com Launch Centre in Toronto where we help fledgling Internet start-up companies seed exciting new business ideas and grow them into successful business operations. We believe that Ontario is well positioned to be a leader in the digital economy, but the road ahead is not without obstacles.

Andersen Consulting, which has operations in 48 countries and employs 65,000 people around the world, is recognized by industry experts as the leader in Internet strategies and the operational transformations needed to implement those strategies. We have worked with the world's most innovative companies and governments to help them realize their potential in the new economy. It's because of our experience that we recognize the importance and relevance of Bill 88.

Here at home, the 1,300 professionals we employ work with clients such as Nortel, Alcan, Canada Post, the government of Ontario and many others. Quite simply, we understand e-commerce and we understand the Canadian marketplace. Furthermore, we are a committed participant in electronic commerce as a supplier, a customer and an investor. This legislation will pave the way for many new entrants and greater participation in the digital economy and help us carry out our business more effectively.

As we noted in our e-commerce survey of Canadian business, completed last year, technology convergence has done more than change the way we do business

today. It has changed the very economic assumptions on which business has long been based. It has changed the industrial economy into a new, electronic economy.

No longer are interaction and collaboration costs high for business. No longer do physical assets play the central role in value propositions. No longer does size ultimately limit returns. No longer is access to information restricted and expensive. Most importantly, it no longer takes years and deep pockets to build a business with a global presence.

Winning in the e-economy requires more than just creating Web sites and virtual channels, automating customer service and building new skills.

When Attorney General Jim Flaherty introduced this legislation on June 13, he referred to the exploding digital economy when he stated, "For Ontario, that means the creation of new jobs and the potential sale of millions of dollars in goods and services." The opportunities for economic development, job creation and revenue generation are immense. However, there are a number of threats implicit in the digital economy.

In an industrial economy, critical mass, economies of scale and proximity to the marketplace are three of the more important elements of market dominance. Ontario, more than any other province in Canada, has prospered in the industrial economy. In the digital economy, proximity to the marketplace has been virtualized, meaning that every Web site, regardless of where it is located, is virtually present in every home.

In the mid-1800s, the value of manufactured goods surpassed agricultural products for the first time as part of the gross domestic product. It was a revolutionary development. But there is another revolutionary development on the horizon. In the very near future, the value of intangible services will surpass that of manufactured goods. More and more of the industrial engine will be used to produce goods at much lower margins in support of the higher value, intentions-based services provided on Internet. The threat to Ontario is that these services, which are tailored to the individual, can originate anywhere in the world, and bring with them the very real potential that the most valuable part of the transaction will occur somewhere other than Ontario.

In an industrial economy, moving the locus of economic power could take decades. In the digital economy, it can happen virtually overnight. The government of Ontario must remain vigilant to ensure that the Ontario economy remains balanced in the provision of goods and services. Economic development efforts need to be focused on ensuring that e-businesses can continue to grow and prosper in Ontario so that we can ensure economic prosperity and jobs for all Ontarians.

In the new economy, borders are obscure and jurisdictional sovereignty is unclear. The purchase of goods and services on the Internet does not require the buyer to know or even care what province or country the goods or services come from. The primary considerations will be the price and speed of order fulfilment. For many services, fulfilment is instantaneous, and cost and quality

are the only considerations. This creates an interesting challenge: Who should be responsible for collecting and remitting sales taxes? If the buyer is responsible, non-compliance will become the norm rather than the exception. If the seller is responsible, as is currently the case for the majority of businesses, inequities will begin to occur that could ultimately affect the competitiveness of Ontario businesses.

To understand this phenomenon, you need to picture the Internet as a giant department store. Similar goods and services can be compared as if they were sitting next to each other on shelves. If an Ontario buyer was required to choose between two comparable products or services of equal base price, and the one sold by the Ontario company has an 8% sales tax surcharge which the one sold elsewhere does not, the natural assumption is clearly that the majority of Ontario buyers will purchase out-of-province goods and services, all other things being equal. Because goods and services on the Internet will look like they are from the same giant mall, differences in taxes from jurisdiction to jurisdiction will in fact cause consumers to see artificial price differences. Given the heightened competitiveness of e-commerce and the ability to serve a global customer from anywhere, low- or no-tax jurisdictions will have an advantage in attracting digital economy business. I don't believe that's a big problem today, in part because of the confidence and trust issues that Bill 88 is going to address. As the volume of trade increases, however, this will become a much bigger issue, and steps to address the solution should undertaken as soon as possible.

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One of the more exciting promises of electronic commerce is its ability to allow an organization to improve the level of service it provides while at the same time reducing the cost of providing that service. As governments across Canada face increasing budgetary pressures brought on by escalating health care costs, an aging population and rising education costs, providing better services at lower cost will become an attractive counterbalance to increased deficits.

The government of Ontario has already established a very broad presence on the Internet. All ministries and agencies have Web sites, and a huge amount of information is available to the public through these Web sites. Notwithstanding this breadth of information, the number of services available on-line for businesses and consumers is limited, although some of those provided are excellent. The Ministry of Consumer and Commercial Relations is a good example of excellent service delivery.

A recent survey noted that access to government information was the number two target for individuals using the Internet. Citizen and business interest and willingness to receive information and services from government through the Internet provide a tremendous opportunity to use the Internet as a vehicle to improve and expand services, increase access and position Ontario as a leader in e-government. At the same time, the province can position itself fiscally for potentially leaner years ahead.

The Internet provides an opportunity for the Ontario government to both spur economic development and streamline government services through its own use of the Internet. As I mentioned earlier, Ontario government ministries already make extensive use of the Internet. However, the ministries have not implemented their Web sites as part of a broad, integrated strategy specifically directed to achieving policy, program and economic development objectives. Alignment of Internet functionality with overarching objectives could have a profound effect on the quality of services offered, the cost of service delivery and the perception of an accessible, connected government and long-term economic development, particularly as it relates to small business.

The two opportunities of greatest benefit to the government of Ontario are integrated service delivery and electronic procurement.

Integrated service delivery is a means for the government to present itself that reflects the way citizens and businesses would like to see it. Currently governments are organized along ministerial or departmental lines with a program-centric focus. Citizens and businesses, however, have needs that cross these organizational boundaries. The process of navigating through the government maze is confusing and not aligned with client needs.

The Ministry of Consumer and Commercial Relations has done an excellent job of beginning the process of satisfying the regulatory requirements of business through a single access point. This excellent example should be replicated throughout government to deliver a wide array of additional services to both citizens and business.

The Internet provides a unique opportunity to overlay a new service delivery model on top of the existing organizational construct. Ultimately it also provides the opportunity to rethink existing structures and to redesign government to be more efficient, effective and accessible. A redesigned government could be operated with far less expense, freeing up funds and resources for the fiscal challenges that we all see on the horizon.

Restructuring will not be simple to achieve. Being able to see a citizen or business as a unified whole across organizational boundaries will require a higher level of information sharing between ministries. This will raise questions of privacy and confidentiality. Notwithstanding those potential difficulties, the benefits for both the government and the citizen over the long term make integrated service delivery an important consideration.

It is important to note that as government services become more common on the Internet, the Ontario government will not be compared with other governments as much as it will be compared with other private sector delivery organizations. The perceived relevance of government to its constituents will be in part based on how well government service delivery compares with the best on the Web.

Electronic procurement is a vehicle through which goods and services are purchased electronically. Businesses around the world have embraced e-procurement as a means of reducing the cost of purchased goods, significantly reducing the administrative costs and delays normally associated with purchasing, and increasing control over the procurement process. The Big Three auto manufacturers recently announced the largest e-procurement project ever undertaken. Typically, the overall cost of procurement is reduced by 10% or more, including the cost of goods. E-procurement also benefits the supplier by reducing costs and providing access to new markets.

Last year, Ontario government ministries spent more than \$3.4 billion on goods and services. A large number of Ontario businesses benefit from their ability to provide goods and services to the government of Ontario. E-procurement provides a vehicle to allow smaller businesses more opportunities to sell in this marketplace.

Many small businesses cannot sell to government today because of the high cost of tendering. E-procurement could eliminate much of the red tape associated with tendering and provide a much more inclusive opportunity for small businesses to participate. Equally important, moving the government to an e-procurement model will create incentives for more businesses to do likewise. By bringing more businesses into electronic trading relationships, the government will help expand their marketplace from regional to global, ultimately making Ontario business more competitive and successful.

In conclusion, I would like to reiterate our support for Bill 88 and our desire and commitment to, as the Attorney General stated, see Ontario "play a leading role in the development of the on-line economy." We encourage the government of Ontario to continue in its efforts to reduce red tape and create a safe environment for the expansion of electronic commerce. We also encourage the government to more effectively use its position as one of Ontario's largest purchasers and service providers as a vehicle for economic development and electronic service delivery so that both the people of Ontario and the world see us as leaders in the digital economy.

That's the end of my prepared presentation. If you or the committee have any questions, I'd be pleased to answer them.

The Chair: Thank you very much, Mr Brown. There's time for perhaps one question from each member.

Mr Kwinter: Thank you for your presentation. I just have a question because I have been following this issue very closely and I've seen the failure of dot-com companies where the young guys have made millions, if not billions, of dollars, never sold a product, never delivered a service, but just on the assumption of some of the things you're talking about.

When it comes to the final analysis, someone is going to have to make that product, to make it competitive, to

get it to wherever that e-commerce customer is. So when you talk about the effect on the economy, I agree there's no question that it's going to speed up the economy, but basically when you talk e-commerce, it's an information transmission system. There isn't a product that can travel over the Internet, other than a service product or an intellectual property. Physical goods are still going to have to be manufactured; they're still going to have to be competitive.

Because of your experience—you say you're in 47 different countries?

Mr Brown: In 48.

Mr Kwinter: In 48, sorry. Without question, e-commerce is going to speed up communication, but do you really think that it, in itself, is going to transform the nuts and bolts of business?

Mr Brown: I don't just feel that and our firm doesn't just feel that; most of our clients feel that. One of the real challenges they are dealing with now, and you alluded to it directly, is that somebody has to fill the order. It's not like going to a retail store where you pick it off the shelf and take it with you. Many of our clients are working very hard to redesign their logistics systems to move the fulfilment of the order into much more real time. As it's more and more possible to deliver goods next day or same day from warehouses spread around the country, there is going to be a major change in how people buy goods, and many of them are going to use the Internet rather than retail as their chosen option to buy things that they don't need right now.

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Mr Martin: One can't but help get excited about all the possibilities that are here, and it certainly is interesting to be part of all of that when you sit down in front of your computer and realize the world that's in front of you. The difficulty in all of this, of course, is how you protect people who will not be able to participate or who may be taken advantage of or who may get hurt by the information that they, in all good intention, deliver by way of the Net or whatever. I look at the new economy that's blowing in Ontario, but it's not affecting everybody equally. Those who are furthest away from the centre are still struggling to get into the tailwind of that, so to speak, and will, I suggest, for quite some time.

The Minister of Consumer and Commercial Relations has recognized that there are going to be problems because he's now launched out on a discussion with the people of Ontario about issues of privacy and the protection of consumers. He's including in "consumers" small businesses who are consumers of goods and, in the world that we seem to be moving into, seem to be more and more the prey of the bigger, multinational corporations who are only ready and willing to take advantage of opportunity to make more money at the disadvantage of somebody else.

Given all of that and the rosy picture that you painted—and I agree the government needs to move forward on this front—how do we make sure that

everybody is included and that we minimize the damage to people and communities?

Mr Brown: If I could paraphrase, I think there are a couple of questions there. One question was related to large multinationals putting smaller companies and citizens at a disadvantage based upon their economic power. Another was based upon the fear that this evolution may cause some problems around privacy and confidentiality and leave some people behind.

I'll start with the first question. In fact, trends are showing us that it is actually the larger companies that are the most threatened by this because the ability to do business on-line with very small capital investment to get started and a change in the view of services versus products on-line has positioned hundreds, if not thousands, of small companies very successfully, which they couldn't have done in the industrial economy. So this is very much an opportunity for small businesses as opposed to a threat to them.

In terms of the privacy and confidentiality, I don't think there has ever been a technological or sociological change of any magnitude that doesn't have impacts that we have to be concerned about. The digital economy does have issues that we're going to have to address around privacy and confidentiality. Part of the reality is not about whether or not people have information about me that I didn't give out. If I didn't give it out, nobody would have it. The issue is around sharing, and those are issues that we're going to have to deal with. That's part of the evolution of this new opportunity.

Mr Martin: Thank you.

Mr O'Toole: Thanks very much, Mr Brown. I just wanted also to commend you for recognizing the work that the Ministry of Consumer and Commercial Relations has done and is doing as part of their consultation document that's out. I just want to be on the record as recognizing your expertise in that, and I'm certain you're one of the consultation groups.

You mentioned a couple of words that are quite important: the integration and harmonization issues. Really, that ultimately will be my question after I finish with my 15-minute preamble.

I just want to bring a couple of things down to reality. Having worked in General Motors for 30 years, and my riding of Durham, of course, is part of that, I like the analogy and the question Mr Martin asked. Right now I know, for instance, that with the just-in-time and the whole logistics issue, the model now is the customer actually pays for the car before General Motors ever pays for the parts. It's 30-day billing. The inventory pipeline is so short now that between order and delivery and payment, they've never even touched the money. So it's quite a profound revolution, as you've described it very effectively.

My question has to do with more of the harmonization and integration issues. I'm somewhat puzzled, when I look at the whole model based on the UN model—and obviously the largest economy in the world is the US economy, and perhaps Japan in there somewhere—as to

who should take the lead. It comes back to, what's the format? Who's talking to who, and in what language? Of course, then the protocols of privacy and confidentiality, not to be subordinated, should be the same everywhere because the transaction occurs in cyberspace. It really doesn't have a home. I log on to buy a book, I'm actually talking to Plano, Texas, and I'm getting the book from Taiwan. Who collects the tax is a very important issue.

So I'm saying, who should take the lead here? Is the federal government far enough ahead on this issue or are they, I hate to say it, lagging behind? What's happening?

Mr Brown: I think the issue is that even though the promise of e-commerce is huge, the reality of it today is quite small. Nobody is seeing any erosion of tax revenues based upon Internet sales at this point, not to an extent that troubles anyone. There are a number of governments who are looking at this. I think it's a sovereignty issue. I think that taking the lead is not as important as making sure you're not buried in the aftermath.

Mr O'Toole: It's very good, but it's profound with respect to—

The Chair: That is your question, Mr O'Toole. I limited each member of the committee to one question.

Thank you very much for your presentation, Mr Brown. We appreciate your coming this afternoon.

CANADIAN BANKERS ASSOCIATION

The Chair: The next presenter is Shameela Abbas, legal counsel, and Bradley Crawford, QC, of McCarthy Tétrault, representing the Canadian Bankers Association.

When committee members have completed their cross-floor dialogue, perhaps we can hear from the presenters.

Mr Bradley Crawford: Thank you for giving us the opportunity to appear and present a few comments on Bill 88 on behalf of the members of the Canadian Bankers Association.

The bankers association and its members are convinced that the key to continued growth and international competitiveness of Ontario's economy depends on the ability of Ontario's population to adapt to the communication and business methods of the Internet and the 21st century. Antiquated laws that might inhibit the shift from paper-based systems and methods will impede citizens and local businesses in their efforts to change and keep pace with developments elsewhere. The Electronic Commerce Act is a step in the right direction. It seeks to eliminate all antiquated rules that would tie us and our transactions with each other and the rest of the world to outmoded technologies.

We support Bill 88 and would like to propose a couple of issues on which you might consider improving it in order to make it an even more effective tool for development. I believe members have a copy of our short brief, and delivered with that is a small pamphlet that is available on-line if you wish to test your search skills. Actually, we make it very easy by giving you the URL. The pamphlet is available to the public and has been

widely distributed. It is background information for members of the public on demystifying e-commerce for those who need it. Of course, there are decreasing numbers of those who need it. On page 5, you'll see some figures that indicate that between November 1999 and January 2000 we think that 56% of Canadians used the Internet in some way or another; that's 12.5 million persons. Other figures on page 7 indicate that one estimate of the value of the Internet economy to Canada is in the neighbourhood of \$28 billion and that it's possible to link about 95,000 jobs to the Internet. So we're not talking about a peripheral development, and I'm sure you've heard the same kinds of information from other people.

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The first point that we make is one to commend the general approach of the bill, which is to make the minimum changes in the existing law required to facilitate transactions expressed in new media and new technologies.

We also commend another policy found in the bill, but not quite so evident, that with one exception it does not endorse any particular technology. We think this is a very wise policy, particularly when new technologies are being developed as rapidly as they are. We think it's best for market forces and scientific developments to govern what is made available and for businesses and consumers to make their own choices concerning what they will use and what they want.

In that respect, we're sorry to see section 29 in the bill. It is very specific in addressing biotechnology—biometric information as a unique identifier. Some scientific evidence is that biometric information may be undesirable for a number of reasons. A lot of people distrust it, and it may not turn out to be a winning technology. We think that section 29 is a misstep in the general direction of the bill and that it would be better left out. All the other technologies are not addressed, and we think that's the right way to go.

Our second point is that we would very much favour some recognition in the bill of the quasi-public nature of the process that will be necessary in going forward to implement this law by new regulations. Much of what is in the act now can't take effect of its own force in text because it lacks the implementing regulations. We think the normal process of regulations, where the government consults such persons as it considers worth consulting and then comes forward with proposals, might not be the most effective method in this case because of the range of technologies available, the choices that are available and also in recognition of the state of readiness of the market to support new technologies and, to be frank, the sunk investments of participants in old technology.

I don't think public hearings would be the way to go, but we have to envision a quasi-public process in which consultation by the ministry would be of industry groups and consumer groups with a proven interest in the topic and something useful to say to get the right balance in the regulations and make sure we continue to move forward and avoid back steps or steps in the wrong direction.

A third point is much more narrow. It concerns section 8 of the bill, which purports to give the same force to any electronic document that the original would have in any legal requirement concerning an original. We support this in general terms. There is no reason to continue to venerate one piece of paper over another when the information can be certified to be the same in all the replicated copies. But a contract or custom or usage or business practices may need to be accommodated in making an exception to that. There are some forms of commercial documents—I'm thinking of cheques, bills of exchange, warehouse receipts, letters of credit, documents that are called chattel paper that express an interest in a specific chattel and a promise of someone to pay its value. These documents have unique value when they are proven to be originals. In fact, much of the law of commercial financing requires that parties deal with originals. Of course, bills of exchange are not within the act; that's not a concern. But the other documents I mentioned—warehouse receipts, letters of credit and chattel paper—are clearly within the scope of the act. By their terms they commonly require the delivery of an original as proof of the right to demand performance. If you have a document that requires the surrender of the original, it's a valuable piece of paper. You can take it to a bank and borrow money on the strength of it.

We will develop new business methods that allow us to use electronic documents in new ways, but until that comes along there is still a considerable body of financing based on paper that requires the delivery of an original. You can see that if a law were to be passed in the strict terms of section 8 that would substitute any electronic copy, the bank would not be safe in lending money on the original because it couldn't distinguish its claim to demand performance from the claims of any other person who might be holding an electronic copy of the instrument.

Section 26 takes certain documents out of the scope of section 8, and we recommend that 26(2) be looked at again and that amendments be introduced to make it clear that legal requirements found in contracts or in documents by the consent of the parties that give special value to an original be a recognized exception under the act. We think this is a transitional step that will preserve existing methods of trade finance without inhibiting the development of more sophisticated electronic methods in future.

Our fourth point concerns the meaning to be attributed to a phrase in the bill. What does it mean to "provide information" to someone? Sections 6, 7 and 8 contain requirements that certain information be provided. It's to be provided "in an electronic form that is accessible by the other person so as to be usable for subsequent reference and capable of being retained by the other person."

Section 10 is the source of the difficulty. It says that for the purposes of those three sections, electronic information "is not provided to a person if it is merely made available for access by the person," and then the

words appear, "for example on a Web site." As a general rule, we support the thrust of the bill in allowing information to be provided electronically where it can be shown to be "accessible by the other person," "usable for subsequent reference" and "capable of being retained by the other person."

We think that some methods of using Web sites may satisfy those tests. We think, for example, that two very different cases may be caught by section 10. I believe some members of the committee have already done this. Maybe you've logged on and opened a bank account or purchased a term deposit or some other service from a bank on its Web site. On the sites there is a great deal of information given, a good deal of information elicited, but it's not all to be found on one page. There are often hot buttons or hyperlink text buttons to press. One of them may say, "For the legal terms governing what you are about to do," if you want to see a copy of those, "press here." When you do that, the screen immediately displays the legal terms. That's available for anyone capable of manipulating the mouse and understanding what to do, to click on "print" and get a copy of that, and they can keep it for as long as they want.

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We think that's not what section 10 was intended to address. We think that information is made available to the person on the Web site in a way that section 10 ought not to disparage. We agree with the general thrust of section 10. It shouldn't be enough for a merchant, on being brought into court by someone, to say, "Well, that buyer ought to have known the terms on which I was dealing. I posted those on some Web site a year ago. He should have been more careful. He should have gone looking for that." That's the kind of case that section 10 was intended to address, and we agree that would not be a defensible practice.

We think the basic idea of providing information to a person normally would include some actions of assembling it and addressing it, or getting it out there, pushing it out to the person, but not in all cases. The case we would make an exception for and would ask you to look at section 10, again with a view to amending, to provide for is where the very Web site that is being used by the parties as the medium of communication to create their legal relations has available for the taking information that the customer can download, store in electronic form or print.

Section 5 contains the same three tests. It says, "A legal requirement that information or a document be in writing is satisfied by information or a document that is in electronic form if it is accessible so as to be usable for subsequent reference." We think those terms should have the same broad meaning that we've tried to show with our criticism of section 10 and our approval of section 10 in certain applications.

The final technical point is perhaps again a small one but we think it may have considerable importance: the use of corporate seals. There is some troubling law in the Ontario Court of Appeal decision in *Royal Bank of*

Canada and Kiska, which is now more than 30 years old but still I think represents the law on the topic, as to what is required to seal a document. Sealed documents have not disappeared from commercial financing, and will not. In fact, they haven't disappeared from a lot of financial and commercial transactions. Some lawyers' practice in some major firms in Toronto is to advise that wherever a corporation acts outside the ordinary course of its business, some sort of representation from a responsible corporate officer that this has been duly authorized by special action of the board of directors is prudent. In fact, you may be taking a risk that you're dealing with an unauthorized officer or dealing in an unauthorized transaction if you don't get some representation of that nature.

The Ontario Business Corporations Act has made corporate seals optional for 20 years, so not all corporations have them. Where it is the case, you're probably familiar with the ritual where a lawyer will produce from a box somewhere a little red wafer and put it on the paper and then there's a signature, an acknowledgement of the seal. A case in the Ontario Court of Appeal said that's fine, you can do that, but just the fact that it says "legal seal" on the document, or "LS" or some representation, is not by itself enough. What happened in that case was that the person was asked to sign a document. He did so and handed it over, and later someone came along with the red seal and put it on there. He said, "That wasn't on there when I signed it." The court said, "Well, it isn't a sealed document."

Moving forward to the 21st century, we may want to communicate in the course of business transactions electronic documents and be satisfied that we have the same protection in that medium that we have on paper. We want the corporation to say, "This is my sealed document." If Kiska is to be relied upon, they can't do it just by having the words "legal seal" there. We've got to have some way of sealing, some electronically secure signature. Something has to be developed. We don't have a concrete recommendation, but maybe the definition of "signature" could be expanded somehow to include a seal where it's appropriate and the data content of the secure electronic signature permitted it. That would change the law as represented in the Ontario Court of Appeal judgment and allow sealing by electronic media.

Those are the technical points we wanted to make. I hope I've been clear. If not, Madam Chair, do we have some time for questions?

The Chair: Yes, we have time for about one question each, given the length of questions from each member. We'll start with Mr Martin.

Mr Martin: I appreciate your coming and giving us some suggestions as to how we might improve on this piece of legislation, because that's ultimately what this exercise is all about. It certainly helped me get my head around a couple of issues.

Just for further clarification, the issue you raise in number 1, not identifying one particular technology over

another, could you expand on that, using the example you have here? The biometric versus what?

Mr Crawford: Who knows. Biometrics information would be, for example, a fingerprint or a retina scan. Some of these methods are in experimental use now. Some people feel some discomfort about putting their eye up to a machine that's going to blink a little laser in it for the purpose of reading the unique pattern of lines or marks on the retina as an identifier of them.

Section 29 says, "This act does not apply to the use of biometric information as an electronic signature or other personal identifier, unless another act expressly provides for that use or unless all parties to a transaction expressly consent to that use." Fine. It's enabling and it's not going to force anybody one way or the other. It's just that to us it's not justified as an exception to what we approve of as the general principle on which this bill is based: to be technology-neutral. This goes further. It's not just neutral; it says biometric information is OK too. It's trying to help along the development of one technology over others. We don't see the justification for that because we anticipate that biometric information technology may never develop as the leading identifier of humans because of the concerns about measurement and risk and invasion of privacy.

Mr Steve Gilchrist (Scarborough East): Thank you both for the presentation. We certainly appreciate the detail you've put into it. There are lots of questions to be asked, but given the limited time, I am curious to know whether you would like to just take a second to further refine your fourth point about when we would make a distinction between the provision of data on a Web site and when that wouldn't be acceptable. Do I gather from your comments that only when the Web site itself is the start and finish of the execution of a contract would you be comfortable with providing, or are there any other circumstances where, for example, in the course of some other means of negotiating, you are specifically directed? It's no different than if I told you, "For further reference, please see our written booklet on the laws applying to this contract." If it said all of those details are on a Web site, would you be equally comfortable with that as long as you were expressly told to go to that, at which point of course it would be up to you to say, "I don't have a computer" and some other means would have to be provided, presumably?

Mr Crawford: I guess we're more interested in the point itself than in trying to define the extent to which it might be pressed. We think you will hear from other groups that 10 is all wrong and should be removed. We don't think that's quite a justifiable position. We agree there are some reasons for concern, and consumers and business people ought not to be sent on a wild goose chase to get information that they're entitled to, particularly where there is a legal requirement which says that someone must provide it to them. So we think that 10's real purpose is to prevent sharp practices being developed around very lenient interpretations of what it means to provide. "Oh, I provided that. I posted it to

some Web site.” We think that is its primary purpose and we support that, but when we look at the applications that some of our members already have up and running on the Web, we find that the use of hot buttons, hypertext links and so on does provide potential customers with all the information they want. You can download an awful lot of information from these sites if you choose to do it.

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While the basic idea behind the verb “provide” in any legal requirement would be that something has to be done to assemble the information and push it at you, we think there are parallels in the physical environment that we are more familiar with that would show the point of what we’re trying to get at. If you order a credit card from a bank, they must provide you with a confidential PIN, and they do that by sending you a piece of paper with the number printed on it but covered over by security tape. That’s to prevent bank employees from peeking, or if somebody who intercepts the letter sneaks a peek at the PIN, you can tell it’s been tampered with and it’s been corrupted so you don’t rely on it. If a person chooses to use the card without looking at the PIN, no one could say that the bank failed to provide the PIN. It was there; he just chose not to avail himself of what was readily available information.

What we’re reaching for is some way of getting to you the idea that the same kinds of judgments may be made by consumers on the Internet. If you’ve done all you can to make the information available, and all he has to do is click and download, then you should have done it. The fact that it’s on your Web site shouldn’t matter. So 10 seems to us to overreach a little bit in trying to solve a real problem.

The Chair: Thank you, Mr Gilchrist.

Mr Kwinter: Thank you very much for your presentation. I think you raise a couple of really interesting points. One in particular is the one about consultation. You’ve raised a very interesting legal point and that is the issue of the seal. You know of course that the little red seal represents consideration in the law of contracts.

Mr Crawford: It takes the place of.

Mr Kwinter: Yes. So it represents that. In a contract, in order to be legal and enforceable, there has got to be consideration, and that’s what that little red seal does. Without it, you have a problem. I’m not saying there isn’t a solution, but I don’t know what the solution is when you’re doing it electronically. There has got to be some sort of a protocol, there has got to be some sort of almost internationally recognized substitute for that consideration. Do you have any suggestions as to how that could be done?

Mr Crawford: I’ve made one proposal and let me just make a clarifying comment to see if we can agree on the scope of the problem. The seals I was referring to are not necessarily those that made the presence of consideration unnecessary. You may have a simple contract or a contract under seal. Only a simple contract has to be supported by consideration. The document under seal is enforceable whether there is consideration or not. It’s

called in England a deed poll because it was cut in a certain way.

We were really addressing the kinds of documents that are given routinely in financing transactions where a corporation has to certify, under seal, that its bylaws authorize the president to do certain things, or the secretary and president signing together. Every corporation has to make available to its bank the names of the persons who are authorized to write cheques on that account, and they have to do it under seal. The reason they have to do it under seal is it’s accepted legal practice that if it’s an act outside the ordinary course of business, you’ve got to take an extra step to be sure that you’re getting the right information, otherwise you’re not protected.

We think the definition of “electronic signature” could be amended slightly to add an element of sealing as part of the formality of execution. Right now, it just talks about the means by which a person creates or adopts to sign a document that is attached to or associated with the document. We think that could be amended to include the element of sealing. The reason we raised it is that the Ontario Court of Appeal, when it last considered the issue, said that in the absence of some law to the contrary, the common law cannot say that someone on a telephone can say, “That’s my sealed document.” He can’t do it at a remote. He’s got to be there and add the element of formality to his execution.

We’re saying, why don’t we try to remove that constraint by saying that an electronic signature may include an extra element that indicates that the document is sealed? It’s not so much to get rid of the problem of consideration but to give the document an added level of reliability because there was an extra element of solemnity in its execution.

Mr Kwinter: May I have one more second just to get a clarification?

The Chair: Thirty seconds.

Mr Kwinter: Again, the idea behind the seal is to assume that that seal is under lock and key, that someone has the ability to bring it forward and seal a document and that gives it the authenticity it requires. When you do it electronically, how do you get that assurance? There’s a representation that there’s a seal. Who put it there, and how did it get there?

Mr Crawford: I don’t know. All I can say is that everybody who is associated with this new technology is impressed with the need to keep electronic signatures confidential. When there’s any suspicion that they are compromised, they’re abandoned and new ones are put in place. I suspect that would be the case whether we add an element of sealing or not. You probably have more assurance that you’re dealing with the person you purport to be dealing with when you deal in electronic media than you do on paper because it’s so easy to forge or copy a seal or apply it without authorization. The electronic environment actually contains more safeguards for the public than paper, which is why a lot of transactions are migrating to that environment. We just see the practice and the law dealing with seals as

inhibiting that movement to electronic media, and we want to try to remove that inhibition.

The Chair: Thank you very much, Mr Crawford and Ms Abbas, for your presentation this afternoon.

Mr Crawford: Thank you for hearing us. Good luck with your deliberations.

TERANET

The Chair: The next presenters are Susan Elliott, director of marketing and general counsel, Bonnie Foster, vice-president, corporate communications and government relations, and Juliet Slemming, privacy officer, for Teranet. Good afternoon, ladies.

Ms Susan Elliott: Good afternoon, Madam Chair and members of committee. I am Susan Elliott, the director of marketing and general counsel for the legal line of business at Teranet. To my left is our privacy officer—

The Chair: Excuse me. Could we have one conversation, please, in this committee? Thank you. Carry on, Ms Elliott.

Ms Elliott: To my left is our privacy officer, Juliet Slemming, and to my right is Bonnie Foster, our vice-president of corporate communications and government relations.

I understand we have approximately 30 minutes. We have handed out a package which contains my remarks. Having listened to the previous speaker and half of the one before, I'll try to add in to my remarks points you've already raised, where appropriate. Particularly, Mr Kwinter, on the matter of seals, you may find it interesting when we talk about digital signatures and PKI, which is a way of addressing some of those issues.

We have divided the remarks into three areas:

(1) A brief explanation of the e-commerce business at Teranet is in, to give you our background and perspective as to the way we come at looking at this legislation and the practical input I hope we can make to your deliberations;

(2) General comments about the bill—we too support its passage and believe it will facilitate the growth of e-commerce in Ontario, and we think that's a good thing;

(3) A few specific comments actually about two sections of the bill with suggestions for some possible wording changes—different sections than the Canadian Bankers Association but similar concerns about some possible language that you might want to look at again.

If I may, let me give you some background about Teranet. I know some of you will already be familiar with Teranet. It was formed in 1991 and is a unique public-private partnership, jointly owned by the province of Ontario as represented by the Ministry of Consumer and Commercial Relations and by a consortium of private sector companies led by Teramira Holdings Inc. It includes the now combined EDS/SHL, Intergraph and KPMG among our participants.

Teranet's mandate originally was, and in fact still is, to automate Ontario's land registry system, which is a 200-year-old paper-based system characterized, I think

most politely, by numerous different methods of record-keeping. Tracking the ownership of land from county to county across the province, you experience a lot of variety.

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Our business is in many ways, we think, ahead of Bill 88 as we have already launched what is actually a world-leading on-line application in partnership with MCCR. We have built a secure electronic database which is one of the largest in the world. It's hard to get statistics on that, but we believe it's one of the largest. It contains three million parcels of land and, I think, 250 million images at last count. It's an enormous database with the land records from the province in it—not all the records, because we're still automating, but about three quarters.

This database is called Polaris, and it is accessed remotely by our customers through software that we call a secure electronic gateway. The access is granted through the use of a special security credential, which uses for registration purposes, which I'll talk about in a moment, an encrypted digital signature. Through these credentials we know, first, that the people who submit documents to attempt to amend or update the land titles in the province are who they say they are and, second, that the documents they have sent have not been altered or tampered with en route.

There is no other country or state in the world with such an advanced system. Indeed, many states and countries come knocking on our door and MCCR's door for a demonstration of the system, as it is under consideration around the world, but we've actually implemented it.

Through Teranet, Ontario now has the world's first paperless—a key word for this committee—land registry system. They have electronic registration of land title documents, using our e-reg software, and they do carry the full weight of law and involve not a piece of paper. The documents are created on-line. They are then digitally signed—and that digit is not the finger; I'll explain the digital signature—and they are submitted electronically for review and acceptance.

At various times, each of the three parties represented here has had a hand in implementing this electronic records access and on-line registration system.

Just to bring you all up to date, in case you have some previous knowledge of Teranet, electronic registration is now used for the majority of land title documents in Middlesex county, which is London, Ontario, and it has been since March 7 of this year. Since then, well over 90% of all land title registrations in that county have been submitted electronically. That's fully electronically: as I say, created on-line, signed on-line and submitted on-line.

The counties of Halton and Wentworth also have electronic registration available to them now, and we expect that Peel will follow shortly. In fact, within two years the vast majority of all land title records in the province will be created this way.

At the heart of this system is a digital signature, and it may help you in thinking about seals and sealing documents as well. Without knowing that would be a question, let me spend a few minutes on digital signatures. Bill 88, as you know, deals with something called electronic signatures. An electronic signature and a digital signature are different. An electronic signature or a facsimile copy of a signature is not at all the same as a digital signature. We're not, as I say in the presentation, suggesting that digital signatures be substituted for electronic signatures by any means. Quite the contrary. I think some commercial activities and interactions will simply require an electronic signature. But there is often a higher standard required, and the definition of the way the bill is structured would allow you to have a digital signature within your electronic signature.

There is a lot of flexibility in this legislation. I think it will be up to the marketplace and the parties to decide how to implement it appropriately, perhaps with some government assistance down the road. Having the ability to provide the right level of security to reflect the nature of the transaction is very important in keeping costs down as a supplier and in making e-commerce affordable. I think the bill provides this flexibility very well.

What we are missing in the marketplace, and I think one of the main reasons for the bill, is the legal underpinning to give effect to electronic documents in a world that still does require paper and relies very heavily on it. The words "writing" and "signatures" have long been part of commerce, and they're used to evidence a party's intention to be contractually bound. But technology and worldwide market forces have moved ahead of the law. Digital signatures are a good example of this. As I say, we're intimately familiar with digital signatures. They are in common usage, but without Bill 88, or in our case special legislation which we have for the land records, they're not legally valid. Bill 88 I think helps realign the market forces and what's taken place in the market with where the law is, and I understand that to be one reason for its implementation. I think that's needed.

To get to the meat of it, a digital signature is really a concept. It's not based on a hand-signed image. It's not like faxing something. The words get used in tandem often but they're very different. A digital signature is really a complex mathematical formula, and it allows me as a sender, for example, to send a secure message over an open computer network such as the Internet. It's encrypted with what's called a public-private key, and the private key is unique to me. There's a public key that goes with my signature that then allows others to read it. It's uniquely identifying the sender and connects me to the message.

The electronic signature, by comparison, is really any electronic means. Typing your name at the end of an e-mail is an electronic signature, as used in the marketplace anyway and by the technology people. Facsimile transmission with my handwritten signature is an electronic signature—very different than a digital signature. A digital signature is unique, encrypted. It's a

complex algorithm and it uniquely ties me and whatever I'm sending together, and the recipient knows that it hasn't been tampered with.

So the digital signature really is technology-specific. It's not precluded by the bill but, as you know, not required at all, whereas an electronic signature is extremely technology-neutral. Since the bill does not require any particular technology to create the electronic signature, the parties are left to determine the most appropriate means. For example, if a document in the banking system, to get to the last presentation, ought to be under seal, then the version of electronic signature that they may require in that commercial setting could well be a digital signature. But to send e-mail back and forth to discuss the terms of a contract and culminate in a contract that the parties are comfortable doesn't require security could easily be done by e-mail. They'd both be electronic signatures but one is a much higher standard—the digital signature—and that's why it's carved out and spoken about separately.

When holders of our security credential put their digital signature on a land document—a deed or a mortgage, for example—we know who is signing the document and that they are authorized to do so. We know this because we start with an application and an approval process before we issue the digital signature credential, what's called the certificate or the credential. But the ironic sidebar to us when we were considering this legislation is that while we've built this leading-edge wholly electronic system, we have to use paperwork to issue the security credential to enable access to the system, and it is paperwork. The main reason for that is because the law does seem to require handwritten signatures on legal documents, at least until this bill is passed. I say "seems to" because nobody's quite sure whether a facsimile signature is binding. There is a Court of Appeal case that says that facsimile signatures can bind parties to a contract if that's common business practice, but when you're entering into a relationship in which a lot of transactions are going to occur, you want to have a good, solid contractual foundation to begin, and if there's any element of risk you're not going to take it. So Bill 88 will actually be a godsend to us because we'll be able to put on-line the starting point of our otherwise completely automated process. It's a little difficult to explain to our clients, "We've got this neat, totally paperless system, but will you please fill out all these forms and sign and mail them to us before we can get you started with it?" So I'm looking forward to that very much.

There are other applications, of course. As I take it, you know the on-line marketplace is not just chat rooms or auction sites, stores or magazines. You may not realize that a lot of professional services and support for those professions is moving on-line quite rapidly. We have some e-commerce initiatives: one called BAR-eX, which is also known as the Lawyer's Portal, where we've partnered with the Law Society of Upper Canada and the insurance company, a lawyers' professional indemnity

company, where lawyers can go to a secure area on the Internet and conduct research, exchange documents, store documents, take legal education courses, buy their supplies, advertise jobs, conduct title investigations, search for writs of execution to enforce court judgments. The sorts of things they do in their day-to-day business are now being made available on the Internet to lawyers. This is all done safely and securely in this private network, and we think it facilitates and encourages the on-line transactions while protecting the integrity of the information. You get to use the speed and flexibility and relatively cheap cost of on-line commerce.

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In that portal, there are different levels of security. Sometimes you'll need what's called the PKI and the digital signature; other times you'll only need an electronic signature. Sometimes you won't need any signature; it depends on the business you're conducting.

We also have something called GeoServer, which is a virtual warehouse of electronic geospatial mapping data. This can be accessed by municipalities across the province. It permits the local municipalities to make their data available to citizens and professionals in ways you could never previously imagine. They can take multiple databases and show layered views so that people can see what's going on in the community, just like laying transparencies over each other, and combine a lot of information. It's very useful to land-use planners, of interest to emergency services, certainly business entrepreneurs—anyone conducting an activity in the community is interested in this sort of information. It integrates content, applications and delivery systems. So there's a lot happening on the Internet, on the Web, that is affecting every citizen in the province.

Safe, secure transmission of this information is important. But some sort of climate of legal certainty and the structure of rules for on-line commerce is really long overdue. As I say, the marketplace is ahead of the law and it's most welcome to see the law starting to catch up. Privacy, which I'm sure you're all concerned with, is of big concern to us. There are common elements among all our e-commerce activities and they're pretty basic. We believe that e-commerce is not just another way of buying or selling things. It is in fact a major shift in the way businesses, governments and consumers relate to each other. First off, it's not face to face at the moment. But like any relationship, it depends on good communication, security and respect for privacy.

To ensure privacy is respected and is at the forefront of our initiatives, earlier this year we created the position of privacy officer, which Juliet Slemming, here with me today, holds. Juliet's job at Teranet is to provide advice and recommendations concerning our businesses so that when we engage in some brilliant marketing scheme or some hot new development activity, we run it by Juliet and make sure we're complying with Bill C-6 or, hopefully in future, Ontario's privacy act and the Canadian Standards Association guidelines. Juliet is presently reviewing MCCR's white paper, as are we all,

and the Ontario privacy act. We do take very seriously safeguarding this information. I think it's an important part of on-line commerce and it's one of the reasons people are hesitant to use the Internet for business. We do have some practical day-to-day experience with protecting privacy and providing on-line commerce services, and we hope that at the time that bill is before committee we'll be able to contribute to that dialogue as well.

We do applaud the intent and the scope of Bill 88. We think it begins to fill that vacuum in which e-commerce has been operating. I think business, especially small business—I'm also a small business person—and their customers have viewed that vacuum with a certain amount of uncertainty and scepticism. They're always reading things in the paper and nobody really knows what's going on in e-commerce. I think it's absolutely crucial that the government take a lead in this area and set some groundwork, set some rules so that the citizens' businesses and customers have the confidence that this has come from government, it hasn't come from the private sector, it hasn't got the self-serving purpose that is always attributed, sometimes wrongly, to the private sector. We're very pleased to see the rules start to take shape. We know, for example, in the recent Statistics Canada survey that at the moment only 0.2% of the total retail sales of Canadian companies has been on the Internet. We know that lags behind the United States, and I think a lack of understanding or appreciation of rules and the lack of rules in general is part of the reason for that.

Certainty in contract is a fundamental business and legal requirement, and has been for centuries. What we see in Bill 88 is that it removes all the traditional legal barriers to electronic contracts—the ones that I've just spoken about in our own case where we're not sure we can take a facsimile signature. Maybe we can, maybe we can't. Why take a chance? Certainly in the year 2000, the word "writing" includes electronic documents, when you're out in the real world as we call it, and signatures tend to simply be an expression of intent to be bound. That's why you sign something: you want to be associated with it and bound by it.

Recognizing that through the provisions in Bill 88 is a huge step forward which we believe will help on-line commerce start to realize its full potential. Certainly the fact that the bill is based on the Uniform Electronic Commerce Act means that conducting international business will be simpler. There will be variations in the wording, no doubt, in the various pieces of legislation, but the concepts will apply in all the jurisdictions that adopt that same standard, and that's important to us.

However, and I think the speaker before spoke of this, I don't think Bill 88 would be considered the final word on the subject, any more so than any particular law is on any matter these days at the speed at which commerce in particular moves and evolves. E-commerce, as you know, is a relatively new frontier, and it's often compared to the Wild West. It's still growing and changing. It's not possible today to foresee all the legislative structure that

will be required to enable those safe, secure transactions for consumers and for business. That's why you need companion legislation such as the new privacy act. In the interim, Bill C-6 fills the void.

Again, two points that we would draw to your attention in terms of the bill. We think laws need to be created by the political process representing the people and not set by the private sector and frankly not built up on the ad hoc basis that you get through legal judgments. To be sure the bill can keep up with technological developments that might yet arise, we would recommend that the regulatory powers in section 32, right at the end of the bill, add words and certainly address people who come up with their own version—I've taken words from the Saskatchewan legislation which would add the ability for the Lieutenant Governor to define, enlarge or restrict the meaning of any word or expression used in the act but not defined in it. There's a very short definition section in this bill compared to the legislation in other jurisdictions. I guess it depends on your view of making law, whether you'd like to go back and amend legislation or have a regulatory power. But if you're going to keep up with the speed of e-commerce and technology in general, we think it would be prudent to let a regulatory power exist to keep your definitions and expressions fresh and current as new things are invented that we can't even think of at all today. I mean, five years from now the Internet may not exist. I know it's not named in the bill, but it's certainly underneath the heart of the bill.

The ability to keep your legislation current in terms of the technical language and the concepts that exist is something we would certainly recommend. It can be accomplished the way the Saskatchewan legislation has it.

The other thing we wanted to speak about briefly was—and this does concern me a bit more—the contracting on-line in section 21. In section 21 of the bill there's a provision that states in effect that an on-line transaction has “no legal effect”—to me, that means it's void—if an individual or company made a material error in the transaction.

There are a couple of things about this. A material error is not defined. Does it include a typo such as I put in 4 Main Street and I'm really at 44 Main Street? Could someone intentionally make a mistake, lead everyone to believe there's a contract, and then it turns out it's not valid? That's one aspect of it.

I'm more concerned with the legal repercussions of having something said to be of no legal effect. Those repercussions are extreme and I think perhaps unintentional. The risk to each side is that the deal you think you've concluded doesn't exist, certainly in the case of an individual to an electronic agent if the individual has made what can later be considered a material error. If I think of an on-line tendering system, for example, I can envision a third party relying on a material error where the two parties to the contract think there's a contract and there's a material error. The third party comes along and says, “Oh, that contract was never of any legal effect; it's

void.” For people with a legal background, to me it's void ab initio, as opposed to voidable.

Being of no legal effect means, practically speaking, the contract never occurred, so it's incapable of correction even; it doesn't exist. It's a bit of a technical legal point. I don't think this kind of risk is what was envisioned, and when we see the explanatory notes to the bill, it expressly indicates that the transaction is voidable if an important mistake is made. So I would suggest that you might want to have people look at that language, assuming the explanatory notes are correct, which would make more sense, that a transaction be voidable, cancelled by the parties after the fact, rather than void from the beginning for something they didn't intend. That would make more sense.

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Again, in Saskatchewan the way they've handled that is very simple. You've got a subsection (a) in section 21 and if the (a) is moved up to the body of the sentence it says, “an electronic transaction between an individual and another person's electronic agent has no legal effect”—same words—“if the individual makes a material error in electronic information or an electronic document used in the transaction;” and then you get into your subsections (b), (c) and (d). Those have to either not have existed—you didn't give an opportunity to correct to the party—or they failed to rely on it, having been given the opportunity. The way the Saskatchewan wording is turns this whole language into a voidable contract, just by moving that (a) subsection up.

The reason that's important to us is again I go back to wanting so desperately to have a completely paperless system for those of our clients who do wish it and have that on-line contract at the beginning where we issue a security credential.

I don't know what a material error is and I can probably live with that and let the courts and the “reasonable person” test look at that. But if the impact of material error is that I've never had a contract, I think that causes a huge ripple effect that I'm reasonably sure is unintended here, especially looking at the explanatory notes. So I would encourage you to look at the language in the Saskatchewan legislation on that section, or there are other ways to word it. But I think the import should be it's voidable, not void.

In conclusion, having raised those two caveats, we would again congratulate the government for the foresight demonstrated in introducing Bill 88. I thank you for allowing us to present our thoughts on what the legislation means for Ontario business. We think the bill adds legal structure and creates more choice for consumers. It allows on-line businesses such as ours to put that final piece of the puzzle in place by completing all processes electronically with those of our customers who wish to do so.

E-commerce saves money for consumers, for business and for government, money that's now spent on lost travel time, on manual bill-processing and on lineups at counters. It also is an entirely new economic horizon for

small businesses which otherwise have a tremendously difficult time finding a level playing field for their endeavours. We've recently been conducting some business on our Web site, hiring somebody to build part of a store on our Web site. The people are in BC and they have a great product. I won't name it, won't give them a plug, but I keep wondering, is this just two guys in a garage or is it a big corporation? I honestly don't know and it doesn't matter to me, frankly. It probably is better if it's two guys in a garage somewhere building it.

That's the sort of power of the Internet. As long as you assess what you're getting and you use it and you put it through the hoops and you keep your wits about you as a business person, you don't have to deal with a major corporation. It is a great leveller.

I think where small and big business certainly need a boost from this bill is to set up that structural set of rules that everyone can rely on. Small businesses don't want to go out and hire lawyers every time they need to conduct business on the Internet. Having a basic set of rules gets them started.

We know that just over one half of private sector businesses used the Internet in the last year, and I know many more will use it as it develops and as the appropriate legislation is in place. We think Ontario can continue to lead in on-line commerce once legal validity is added to that on-line business practice. We feel that the potential for economic success for Ontario business and for Ontario consumers is virtually limitless.

In our experience, I can tell you from Teranet's perspective, electronic commerce with the appropriate legal underpinning is a necessity if business in Ontario is to thrive and prosper. We have visitors from all over the world. We're comparing notes all the time with how people are conducting business elsewhere, and I know the government has the same exposure. I know the ministry we deal with has it.

Speaking from our experience we know e-commerce needs to be carefully managed, it needs to be thoughtfully executed and to have things like a privacy officer in place, but it really is a winning proposition. We think that Bill 88 once again puts Ontario business in the lead. It strikes a good balance between establishing rules to create certainty on the one hand, and not weighing everyone down with cumbersome procedures on the other.

It is harmonized with other national and international laws being developed in the area and it doesn't get in the way. It sets a really sensible standard. We think it will evolve. We think there is some tinkering needed. That's normal for any law and that's obviously why you have these committee hearings. We do look forward to its passage.

Thank you for your time. If there is time for questions I am happy to answer them. I could talk about this all day, as you may have gathered.

The Chair: Thank you very much for your submission. You have taken the full half-hour so unfortunately there won't be time for questions.

Ms Elliott: Just the way I planned it. Not really.

The Chair: But I do appreciate your presentation, and thank you for handing in your submission as well. We appreciate it.

CANADIAN ASSOCIATION OF INTERNET PROVIDERS

The Chair: The next presenter is Margo Langford, board member for the Canadian Association of Internet Providers. Good afternoon, Ms Langford. Please proceed.

Ms Margo Langford: I'd like to thank the honourable members who have remained in the room of this committee for an opportunity to say a few words about Bill 88, the Electronic Commerce Act, 2000. I've been asked to start by informing you about my involvement in the electronic commerce industry.

I have been working in the Internet industry for about five years, since 1995, as both in-house counsel and external counsel to Internet enterprises. For two years I was chairman of the board of the Canadian Association of Internet Providers and I'm still the longest-serving director and chair the fair practices committee. I drafted the first Internet code of conduct on the globe in 1996. I've served on at least 12 government-industry committees dealing with Internet policy, including some international initiatives in relation to network access; consumer protection; Internet service provider codes of conduct; cybercrime, including illegal content; infrastructure protection; taxation; privacy; legal framework; and general e-business readiness. I advise companies about the issues surrounding their decision to choose a particular jurisdiction to locate their e-enterprises and advise governments on the requirements for an e-friendly environment that will attract new businesses to the region. Finally, I am also very recently a co-founder of a dot-com company, an on-line dispute resolution services company.

For the record, on behalf of my clients, including IBM Canada and many other Internet enterprises, and on behalf of the Canadian Association of Internet Providers, I'd like to express our support for Bill 88 as drafted. It's an important cornerstone in building the required legal framework for e-business readiness.

I'll first wear the CAIP hat to explain why I've made this statement. CAIP members include both large and small independent Internet companies as well as the major telecom enterprises and some of the cable ones. Collectively we often refer to them as ISPs. The well-being of ISPs also impacts on suppliers to the industry and on employment in Ontario, especially in the skilled technology workers area. I can inform you that ISPs in Ontario number in the hundreds, if not thousands. It's very hard to tell what an ISP is, because virtually anyone can acquire and align to the Internet and begin to offer hosting services and other value-added services from very small premises. Industry Canada has I think identified about 1,200 in the country. Many of those are in Ontario, and they're very concerned obviously about

their future growth. Their survival depends on being able to host Web sites that store and exchange large amounts of data or Web sites that involve multiple economic transactions. Selling these businesses further innovative, value-added services required to operate such Web enterprises will be the primary activities in the immediate future for Internet businesses in Ontario. In particular, it's widely thought hosting electronic commerce transactions and Web sites delivering entertainment products on a fee-paying basis will be where the money is.

There must be a positive environment in Ontario to attract these enterprises and encourage the location of storage computers, generally called servers, in Ontario, hosted by Ontario Internet companies.

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Right now there are emerging statistics and plenty of anecdotes to provide evidence that things may not be progressing the way they might for Ontario ISPs. Many of the most well-known e-commerce sites, such as TD Waterhouse, just one example, have chosen not only not to locate in Ontario but not to locate in Canada. There of course are a number of factors that go into this decision. But when assessing the advantages of various possible regions, having the right legal framework is on this checklist. As mentioned, e-signature legislation must be in place in the event that there is a dispute over the electronic transaction.

Several studies have emerged this year which indicate that although Canada started off with a very strong Internet industry, take-up rates are slowing and Canada is lagging in e-business adoption. The Report of the eBusiness Roundtable states that "Canada currently lags the US in both business-to-consumer and business-to-business e-commerce. While Canadian consumers are browsing, they are not yet buying as much on-line as their US counterparts. Similarly, fewer Canadian businesses use the Internet to conduct business with their suppliers and customers. Canadian companies need to move quickly and decisively to protect their home markets and expand into new markets. We are already seeing too many Canadian consumers and businesses relying on US Internet sites, too few Canadian businesses migrating on-line, and too many Canadian Internet entrepreneurs taking their ideas, talents and businesses to more dynamic, congenial markets."

I have also provided you in my notes with some stats that were released last month from StatsCan, again showing not that sterling a record. I have also included the full StatsCan report with my material.

Business groups are addressing the issue of accelerating e-business transformation and will continue to encourage firms to e-engineer and keep up the pace with their American counterparts, but there are some things governments can and must do. Creating the right legal and business environments are two such measures if we are to promote Ontario as a place to conduct e-business.

Last fall I was engaged with a group of business people out west. We undertook an assessment of British

Columbia. What we were doing was basically looking around Canada and figuring out where would we spend some money to promote an e-business hub, and BC looked like they had most of the ingredients. One thing they didn't have was e-signatures and e-documents legislation. Of course, last month they tabled that.

So let's not be in any doubt here: this is a race. Companies and other enterprises are looking around, and they're getting to choose where they are going to be. As such, many governments are also looking at what they can do to encourage e-business, and everybody wants to win. Ontario is obviously well positioned as well to attract e-businesses but should not be complacent about preparation for e-business readiness. We are tracking what every region is doing, and we are advising our clients accordingly.

Attached with my notes today is also the latest report from McConnell Foundation, one of the several studies using similar criteria to measure the capacity of nations to participate in the global digital economy. Bruce McConnell is a former director of the International Y2K Cooperation Centre. McConnell used five criteria to study 42 nations from all continents. He used connectivity, technology leadership, information security, human capacity and technology business climate as his measures. Of the 42 countries studied, the report states that Estonia, South Korea and Costa Rica, to name three small areas, are well positioned to compete with some of the most wired nations, including Japan, North America and European countries. The point is that size does not matter but key ingredients do. Provinces are in a position to be competitive in the same way that smaller nations can.

Similar studies have been conducted by Harvard and IBM so that regions can self-assess. That's actually the tool we used for e-business readiness in BC, based on a checklist. I do mention that I attached the report; however, I didn't. I'm sorry. I will give it to the clerk if anyone is interested, or you can find it through the IBM Web site.

Tracking e-business readiness is a commitment that IBM has made to its customers and, in addition, e-business policy people from IBM around the world are working with governments to get them ready for the networked world.

Now I'm going to speak just for a few minutes on the actual special features about Bill 88, if I have time, Madam Chair—

The Chair: You have plenty of time.

Ms Langford: —and why it should be passed, in my view, without significant amendments and why in a hurry. Perhaps you have been encouraged today to add various provisions or to use this legislation to achieve things that may go beyond its scope. I urge you not to do so and to pass Bill 88 swiftly. It's needed now; in fact, it was needed yesterday.

I was involved in the informal legal group that reviewed and considered the Uniform Electronic Commerce Act. It was a lively, active process and there

were many possible approaches that could have been taken to every single clause and, for that matter, every word. However, the minimalist approach that has been taken by the Ontario government is the correct one for these reasons:

Bill 88 is consistent with the widely held view that all law and regulations apply to on-line business. So the bill does not attempt to override provisions already in effect relating to electronic documents.

Bill 88 creates confidence for all parties to conduct on-line transactions in a manner that is permissive, requiring consent by the parties, and not prescriptive, forcing all businesses to accept or use electronic means to conduct business.

Bill 88 is consistent with the national Uniform Electronic Commerce Act and international UNCITRAL standards for electronic signatures and documents. This is important because on-line enterprises want to know—the very first question they ever ask you—“What do I have to do to be compliant with the laws all around the world?” The more normative standards we have, the more we’re going to make it possible for people to get over that first hump and actually embrace this technology.

It’s obviously very costly to comply with even the smallest differences in legislation if somehow you have to do an extra step in Ontario that you don’t have to do elsewhere. How would you ever write the program that suggests you’re doing business with somebody from Ontario at this minute and somebody from Saskatchewan at the next? It’s very challenging for making these systems automated.

Enterprises themselves obviously are looking for normative standards or benchmarks for on-line enterprises and consumers to use and measure compliance and competence. Quebec, Saskatchewan, British Columbia, the US, Australia, Singapore, Hong Kong, Ireland, India, Argentina, Colombia and, last month, Germany have all announced legislation based on similar consistent standards, and I congratulate the government on its choice to follow this trend.

Bill 88 has been created as a flexible standard, and that’s also important because technology, as I’m sure you’ve heard many times today, is continually changing, especially with respect to the way a document can be linked to an individual and specified and certified and encrypted and so forth. These things are constantly on the change. Bill 88 gives the ability to use any technology, and that’s an absolute must in any such piece of legislation.

Bill 88 also does not attempt to address legal rules about when documents are received. It doesn’t address consumer protection issues or privacy concerns except as they relate to electronic signatures and documents. All of these issues, while very important—in fact, perhaps critical—to electronic commerce are better addressed in a separate set of initiatives. I note that the government has introduced consultations on both consumer protection and privacy this summer, so I’m expecting that they too

recognize that these are important issues, but this bill is not the place to address those.

Bill 88 will promote the acceleration of e-government in Ontario. This is one of the critical stepping stones to a progressive economy, and showing that kind of leadership will help e-business take off in Ontario.

Bill 88 solves some typical concerns of on-line shoppers and the kinds of questions we get all the time, like, “What is the impact of filling in this form?” whether clicking “yes” binds them, what happens if they make a mistake, click the wrong box, have a typo? How are they protected against any alteration of electronic documents is another question that is often asked, and then, “Why am I bothering to use encryption technology?” Now, with this piece of legislation, we have answers that we can use with customers.

Similarly, Bill 88 also answers some concerns for on-line sellers. As early as five years ago, which was very early days on the Internet, ISPs were some of the first to actually sell electronic digital delivery of anything on-line. In those days they were the first to embrace the sale of software on-line. I can tell you that it was a very frustrating experience, because so often they would deliver the software but there would be repudiation. The people would say, “We didn’t get it,” or “We couldn’t use it,” whatever, and they would charge back to the ISP, who would lose the money because of course they still had to pay the software vendor. It became a very costly enterprise. What this does is give the merchant the ability to actually tie the authorization to an individual and prove that he did indeed sign and purchase the software. This will aid the sale of digital goods on-line and that, in the end, helps people who want to sell particularly their cultural products in Ontario on-line.

Members of the committee, Madam Chair, that’s the formal part of my address. I certainly thank you for your time and encourage you, if you have any questions, to address them to me.

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The Chair: Thank you, Ms Langford. We do have time, about five minutes for each member.

Mr O’Toole: Thank you for your presentation. It seems you’re heavily involved in this process. I’m sure we’re not looking for the perfect solution here today; there never will be one.

I’m just wondering—you did it in sort of short form on the second page of your presentation. You were quoting a recent study of an e-business round table and there were some statistics here that Canada’s lagging behind. There are two questions here really. How is Ontario doing in terms of the Canadian scene? Perhaps you may want to address or explain what we could do, if not just this. And how is Canada as a country doing in terms of its position? Some, like New Brunswick, have made some noises about they’re on-line and friendly, but they don’t have this legislation. I guess it comes back to, myself included and my family—children use this very freely buying records and stuff like that, and I have an e-trade account. But I’m just saying I’m uncomfortable

myself. I think it's for the privacy and the protocol issues that you say should be exempted from this. I'm also the PA to the Minister of Consumer and Commercial Relations, so I'm involved in that consultation paper, but I still don't know what we need. We have to have teeth to reassure the consumer specifically, whether it's a business or an individual, that my information is going to be used this way once I give them my social insurance, my bank account, whatever. That's why people are reluctant—and Canadians are very conservative. I mean conservative in their thinking, not their politics. Could you just respond to that?

Ms Langford: Absolutely, and you've hit it right on the head. This is the consulting group report called Fast Forward, and they highlight actually the three things you've hit on as the reasons. In addition to investment and other infrastructure issues, the three things consumers are the most concerned about are security, privacy and redress—what happens if the stuff doesn't show up. In all of those things there are initiatives underway. So I am certainly not minimizing those. Industry more than anybody was engaged in this process. This was an e-business round table of industry leaders, together with some government people, and they recognized that we have to solve those three problems for sure to give consumers the confidence they need. I actually do sit on a government-industry-consumer group, stakeholder working group, whatever, that is devising not only guidelines for merchants on-line but also now something they're calling the trust mark program, which will be a seal of approval that goes on Web sites to indicate that they have taken care of all of those issues. So you're absolutely right. It's just that electronic signatures are one of, as I say, the checklist. We really have to go through and say, "Yes, we have one of these and we have one of those and we've got one of these."

I've advised clients a number of times actually to go elsewhere than Ontario because they didn't have this legislation in place. In my mind, wearing both business and lawyer hats, it would be unconscionable of me right now to suggest that anybody go in any territory where you couldn't prove that the contract you made on-line is valid.

Mr O'Toole: Ontario's lagging, leading? Where are we?

Ms Langford: There are no specific stats that I know of for Ontario. We have that assessment tool. I haven't actually been engaged in an exercise doing it for Ontario, but having done it for BC, I would say Ontario's probably on par, particularly because there are some of what are called hubs. Silicon Valley in the Ottawa area is kind of an e-business hub where there's activity that's spawning new innovation and new companies, and that's one of the signs of a maturing business market: are you starting to keep the R&D at home and are you creating things here, the ability to train people so the quality universities—certainly Ontario has those. Infrastructure in Ontario is probably better positioned than British Columbia, for instance, on having the right infrastructure

in place. But you have to have everything. So this is just one of those things that we have to get done here to try and mix apples and oranges.

I'm absolutely convinced that the privacy legislation is going to have a profound impact, beginning in January, on how people who aren't already thinking about privacy are going to start to do so. Certainly e-businesses have done things like hire privacy people within their companies. They're thinking about e-mail and in most cases reconfiguring their databases in order to comply with the federal legislation etc. One of those unknown things is whether an ISP, for instance, will be caught by the federal legislation, because we don't know if they're federal undertakings or not. But they're sort of assuming at this point that they're going to have to be ready and so we're making them ready. We have had a privacy code for the Internet providers for more than a year now that matches basically the federal legislation. So privacy is essential but I'm not sure that—certainly the pieces of privacy that Bill 88 addresses are appropriate, but going beyond that in this bill I think is not the place to do it. Sorry, that was long-winded.

Mr Kwinter: Thank you very much for your presentation. I found it interesting in that you've been involved with this industry for five years and I think that basically Bill 88 is really a bill to bring Ontario into compliance with C-6 by covering those aspects of Ontario legislation that are the sole responsibility of the province. The question I would like to ask you is that it would seem to me that in a matter of time, and hopefully sooner than later, every province will get on-line so that everybody who deals in Canada will have a seamless jurisdiction when it comes to using the Internet. Is that a fair—

Ms Langford: Absolutely, sir.

Mr Kwinter: So when you get that, and Bill 88 is out of the way, then we have all of these other issues. You talk about TD Waterhouse not coming to Ontario. I know this may have been one issue, but that's really a technical issue and this bill is really a technical bill to bring Ontario into compliance. I'm thinking about what Mr O'Toole was saying. For example, you've raised a specific corporation that convinced TD Waterhouse to go somewhere else. What were the advantages they were looking for that we don't have here?

Ms Langford: I would say that cost is probably the first one, and that's strictly the fact that so many people are on-line in the United States, so many companies that they can offer these big Web-hosting facilities where you have enormous kinds of services for very little money.

Personally, we have now this dot-com company that I'm involved in, and when we looked at the costs around this province and elsewhere, the best deal that we can get right now is in a server farm in Colorado; you know, an all-in package deal. Definitely, the US is beating us on costs, so it's kind of chicken and egg. The more people we can get on-line in Canada, the more ISPs that can host and create bigger Web farms up here, the more services they can offer at a lower price. It's one of those where we have to build the momentum.

What do we have to do to create the difference on price? We might have to do other things. We might have to have incentives to stay in Ontario. We might have to do tax things. We might have to overcome the cost difference right now. Certainly we have to look at that as our own company and say, does it make much sense to go anywhere except Colorado when we have to scale up right now? But what could other provinces do to make this an environment for us to stay in? I think there's lots of room there for creativity.

Mr Kwinter: So to take it to the next step, once you get rid of this administrative hurdle of getting Bill 88 into effect, then you're competing with other jurisdictions. You're competing anyway, particularly in the United States, but let's just use the Canadian content: you're competing with other jurisdictions in Canada, and the whole argument that I've heard all day today is that the Internet is a leveller and it doesn't matter where you are, so Ontario loses all of the advantages it has in the old economy and is on a level playing field in the new economy with anyone who's got the initiative to do it.

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Ms Langford: Yes. You have to look at tax optimization as well. A lot of the offshore jurisdictions right now are getting very aggressive, because they have another thing they can add in terms of incentive: no business tax. There are all of those factors that people weigh in. My checklist is pretty long when I go through it with clients, and we think about where they want to be. Sometimes the administrative hassle, quite frankly, of moving a company offshore is not worth it, but you can move your intellectual property offshore, for instance. This is going to happen to Ontario, definitely, and this is the reality of a mobile global economy—very mobile. The decision can be made to stay in Ontario this year and to move the company next year. It's not like having to pick up the plant and move it. It's quite simply flicking a button and moving the whole Web site from Ontario to Colorado.

Mr Martin: It seems to me that there are two things here: one is certainly all of the environmental things that make it friendly for new companies to establish in Ontario. Also, though, as you talk about developing these Web farms, you need to develop a sense of confidence in consumers. There are people up in my part of Ontario, northern Ontario, who are looking at this and don't quite understand it and certainly want to be brought in, but they're not going to unless we can assure them that there are some precautions and safety measures in place.

You've come today to encourage us to move quickly and get this on-line, yet what if in doing that we then engender some difficulties in sending a message out? If we haven't put the safety precautions in place, if we haven't done the confidentiality stuff at the same time, and people get in because they've been assured that it's OK now because it's legal to do contracts by the Internet and they find that because we haven't done this other, which is taking care of confidentiality and privacy issues, we may be creating a false sense of security which could blow up in their faces.

Ms Langford: I don't know a single Internet company that doesn't take privacy very seriously, and any time there is a breach from any company that you read about in the paper, obviously it hurts the whole industry. Everyone is working very hard at measures to protect privacy, and a lot of people equate privacy and security as the same thing: "Can my data be hacked? Will people get my credit card number?" those kinds of things. Privacy and security are sometimes interchanged.

The use of personal information in a specific way is what C-6 addresses, starting in January, for federal undertakings, and sometime after that for provincial ones. I'm also confident that that regime is an effective one that companies can comply with and that consumers can feel comfortable about, that you have to get people's consent to use their personal information. Most companies are doing that already because they don't want the kind of feedback you already get from people when you use their information. When I was general counsel at an Internet company as many as five years ago, we already had people who were extremely unhappy when they got unsolicited commercial e-mail from some bulk e-mail house, and they would complain to us. The burden on us and the load of handling those kinds of complaints was enormous even then, and it has only expanded since then. Definitely, Internet providers and Web companies who are commerce-enabled by those providers all share the same common view that we have to take care of these issues that people are concerned about. That's why this report came out this year to sort of announce from on high, "This is the way we're going, folks."

There's another international initiative called Global Business Dialogue of Electronic Commerce, and 60 top IT companies, Bill Gates and Lou Gerstner and Steve Jobs and so forth, of the world get together and they've come up with identical recommendations to this one on the kinds of things that have to be done, including privacy and security and redress—on-line dispute resolution is one of them—and others.

Everyone is working on that. That in a way changes the fact that you also need to make an electronic signature valid, and I'm not quite sure how making an electronic document valid in any way sends a message about the other issues. To me, they're not at all related. This is probably how it's sold when it gets to the media, but I don't think we're saying that just because a document is legal means the systems you're using have been certified or anything like that as, say, having the right privacy policy. Companies are dealing with that right now as to proprietary standards. There are companies that are putting seals of approval on sites. Companies called Web trust and trustee and all of these enterprises are going through and certifying sites. Consumers' groups this summer are doing a survey of Canadian Web sites, and they're going to come out with a report at the end of the summer or early fall, which is going to highlight which sites are compliant with the guidelines that we've come out with, the consumer protection guidelines that include privacy, security and redress.

I think public awareness definitely has to increase on what to look for when shopping on-line, banking on-line, doing brokerage transactions on-line or whatever else. The problem right now is both sides can't be sure that what they've done is legal, and I think that's even as problematic.

The Chair: Thank you very much, Ms Langford, for coming this afternoon and for your presentation.

ONTARIO CHAMBER OF COMMERCE

The Chair: The next presenters, representing the Ontario Chamber of Commerce, are Mr Doug Robson, president and chief operating officer; Atul Sharma, chief economist; and Mary Webb of Scotiabank.

You have half an hour, Mr Robson. If you can wrap up a little early, we may be able to entertain some questions. Thank you.

Mr Doug Robson: Good afternoon. Thank you all for taking the time to meet with us today. With me, as you heard, are Mary Webb, on my right, who is the senior economist of the Bank of Nova Scotia and chair of the Ontario chamber's finance and tax committee. On my left is Atul Sharma, whom some of you may recognize, who used to work here and is our chief economist.

The paper I'm going to refer to is the culmination of an effort by the members of Mary's finance and tax committee, which includes: Jim Vincze, who's a partner at Deloitte and Touche and was a senior person for many years in treasury; Wayne Munday, who has a CA firm in St Thomas; Pam Jeffery, principal in the Jeffery Group; and Ryan Clarke of Glaxo Wellcome—all people who have a fair association with public life in Ontario. I'd like to acknowledge their contribution to this presentation.

We're in the midst of preparing a written submission. Today we'd like to make our oral presentation, and later this fall we'll issue a more comprehensive discussion paper on some of the issues we raise today. We'll spend a few minutes talking about our issues and, as we said earlier, I'd be happy to answer any questions with the help of Mary and Atul afterwards.

In today's presentation, I'd like to structure our discussion in the following manner: first, issues arising out of the legislation and, secondly, laying the foundation for the future.

With regard to Bill 88, issues from this legislation: Overall, the Ontario chamber believes that Bill 88 lays a good foundation for future development of electronic commerce and electronic government by strengthening the public and private sector confidence in electronic commerce.

The Ontario Chamber of Commerce supports the basic principle of the bill outlined in section 4 of the act: "Information or a document to which this act applies is not invalid or unenforceable by reason of being only in electronic form."

The functional equivalency rules set out in sections 5 to 13 seem to be adequate in setting out the parameters within which electronic communications would operate.

Sections 14 to 18 set out the rules that would be applied to public bodies. Those sections of the act clearly state that public bodies must give express consent for the use of electronic communication and transactions. The legislation also states that additional rules beyond those covered in the act may be imposed by the public bodies.

If we are interested in moving into the future, and if the provincial government is committed to utilizing available technologies to improve the relationship with its citizens, then the Legislature should consider changing that section. To clearly state its intent to embrace the future, the government should enshrine in legislation that public bodies give automatic consent to communicating and transacting in an electronic format using a common platform or protocol. Exceptions to this rule must be explicitly stated. The way ministries display their news releases on the government's Web site is an example of how different parts of government are using different platforms to convey information. If you go to the main page of the province's Web site and click on "News Releases," you are redirected to the Canada Newswire site to search for the news release that you are looking for. If you go to the Ministry of Finance's Web site and click on "News Releases," their releases are available within the site itself.

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Section 18 of the act states that payments may be made to the government electronically. We applaud that move and encourage moving forward further in that direction. The Ontario Chamber of Commerce does not have any major objections to the act and believes that the efforts to remove the legal barriers to conducting electronic transactions is a step that's important to making Ontario a leader in e-commerce.

With regard to laying the foundation for the future, I'd like to now spend a few minutes raising two issues that the OCC believes we need to address as the province moves down the electronic path. They are taxation of Internet-based transactions and, second, electronic government in improved efficiency. These two issues are not addressed in this legislation and likely should not be. However, they should be part of the overall debate on how we want to see Ontario evolve as one of North America's most competitive jurisdictions.

With regard to taxation of Internet-based transactions, the challenges of taxing Internet-based transactions are raised by many members of the Ontario Chamber of Commerce. Their overriding concern is that any taxation of Internet-based transactions be efficient and neutral. The taxation of Web-based transactions should be neutral in the sense that it is applied equally across the province, among industries and between countries. The taxation should be efficient in the sense that it is the same type of taxation as applied to companies currently. As the members of the committee are well aware, just in the past five years the nature of the relationship between buyers, sellers and intermediaries has fundamentally changed. The long-held distinction between a good and a service has become blurred and is likely to disappear within the

next five years. All of these changes will have a profound effect on how all governments collect tax revenue from commercial transactions.

As noted in a recent report by Deloitte and Touche, one of the most serious issues arising from the electronic commerce revolution is the disintermediation process. This is the removal of an intermediary in the supply of goods, services and information to the consumer. Electronic business has prompted a reduction in the number of people standing between a supplier and a consumer and has raised uncertainty as to where a supplier actually stands. Manufacturers and producers are dealing with consumers directly. The physical location of manufacturers, producers and consumers has become irrelevant. Web sites can be accessed from anywhere in the world and goods and services and information can also be delivered to almost anywhere in the world. A trend toward electronic purchases appears to be most prevalent in the areas of software, music, books and similar products.

Where consumers once purchased on a floppy disk or CD-ROM, they are now able to download the software over the Internet without the need to transfer it into a physical medium and deliver it. Goods that were once tangible have now become intangible. The removal of intermediaries reduces the number of tax collectors and points of collection for tax authorities which, in turn, limits their control over the flow of commerce. In addition, the digitalization of products such as music, books and software has converted what were once physical goods into services or intangibles. Since the taxation of services and intangibles differs from the taxation of tangible goods, the characterization of supplies has become another e-commerce issue.

The Deloitte and Touche report also noted that different governments have taken different approaches to the taxation of e-commerce transactions. The governments of the European Community, Japan and Thailand have all announced an intention to tax e-commerce transactions involving digitized goods. The United States House of Representatives, on the other hand, recently approved a five-year extension to the moratorium on taxation of e-commerce transactions which was set to expire in October 2001.

The common factor among most industrialized jurisdictions is the desire to develop a uniform policy on the taxation of e-commerce. Despite current differences, many countries, including Canada, are waiting for the Organisation of Economic Co-operation and Development, OECD, to formulate a policy to govern the application of taxes to e-commerce.

Canadian tax authorities began to formally address the taxation of e-commerce in April 1997 when the Minister of National Revenue established an advisory committee on electronic commerce. The advisory committee released its report in April 1998. The report contains 72 recommendations concerning income taxes, consumption taxes and customs, duties and tariffs.

The advisory committee recommended that the guiding principle governing the development of Canadian

policy include the following: First, electronic and non-electronic transactions that are functionally equivalent should be taxed the same regardless of their form; second, governments should avoid placing undue regulation and restrictions on, and should avoid undue taxation of, electronic commerce; last, electronic commerce over the Internet should be facilitated on a global basis with nationally and internationally coordinated and compatible government policies.

In September 1998 the minister responded to the report and its recommendations. A major part of Revenue Canada's response was to form four e-commerce technical advisory groups, or TAGs, under the auspices of Canada Customs and Revenue Agency, which were to focus on the following areas: first, taxpayer service; second, compliance in administration; third, interpretation and international co-operation; fourth, consumption taxes. Although many of the recommendations were left for further consideration by the Department of Finance and the TAGs, the Revenue Canada group indicated that Canada would work with the provinces, OECD and other countries to establish a common approach to tax e-commerce.

As the provincial government considers how to best establish taxation policies for electronic transactions, we urge the provincial government to establish provincial technical advisory groups, or TAGs, to assist in establishing a policy that will not unduly affect the competitiveness of Ontario business. The objective of taxing Internet-based transactions should be to enable electronic commerce to be taxed on a consistent basis throughout the world in order to ensure effective tax treatment and to avoid double taxation.

In many cases, the application of tax has been determined by way of specific rulings, rather than through legislation or written public policy pronouncements. As most Canadian jurisdictions appear to be waiting for the establishment of international standards, it appears that there will not be a significant framework in place for the taxation of e-commerce in Canada any sooner than 2001.

As far as consumption taxes are concerned, the unanswered critical problems surround the questions regarding collection points for the sales taxes and characterization of revenues as stated. This shortening of the chain enables the consumers the opportunity to obtain product directly from suppliers without the need for intermediaries such as wholesalers and retailers.

As a result of Internet technology, non-resident persons are able to solicit sales to Canadians and Ontarians without having a physical presence in Canada or in Ontario. Since the bricks-and-mortar business model is not applicable to these e-businesses, there are problems applying the test traditionally used to determine whether a person is a resident in or carrying on business in Ontario.

For companies operating in Ontario, this means they face a disadvantage related to companies that are established outside of Ontario. Companies outside of

Ontario do not collect the required provincial sales tax nor the federal goods and services tax. This essentially means a 15% price reduction for consumers if they purchase from a supplier not collecting the requisite taxes. For the government, it would mean the loss of significant provincial sales tax and corporate income tax revenues.

As a consumer of computer software, the OCC itself has been made aware of the discrepancies between pricing of companies that operate within Canada and those that operate outside of Canada. The Ontario chamber also understands there may be Canadians and Ontarians who may be taking advantage of another country's taxing policies in the same manner. There is no doubt that the potential for a virtual underground economy and multiple tax havens are enormous. The Ontario Chamber of Commerce recommends that the provincial and federal governments work in an expeditious manner to establish the rules of the game in line with international conventions as they are released. The Ontario Chamber of Commerce would also like to offer its services to the provincial technical advisory groups, should we have them as we recommended earlier.

Another issue we want to talk about is electronic government, or what they call G2C, government-to-citizen interactions. An area the OCC is beginning to look at is the structure of government in the new economy. The Internet has revolutionized the way business is conducted. It is now on its way to revolutionizing the way governments operate and interact with their citizens. The Ontario Chamber of Commerce believes that this new technology will change the way governments are structured and the way public services are delivered.

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The potential for increased efficiencies is enormous. The provincial government, when it was elected in 1995, laid out in the Common Sense Revolution a number of objectives it wanted to achieve and the areas of government that it wanted to change. Overall, the government has achieved or is on the verge of achieving many of these goals, but one area where the government has fallen short of its target is the restructuring of government. There have been positive changes around the edges of government. Each ministry is required to submit annual business plans. The target for the number of public service employees has probably been achieved, but the way government operates has not fundamentally changed. The new technologies available to us today can help facilitate the change.

There are indications that the government is moving in that direction. The establishment of the office of the corporate chief information officer is positive. Certainly on the information technology side, it appears that the government is clustering the various ministries according to the CCIO's office. The clusters would be community service, economics-business, finance, human services, justice, land resources, and transportation. The natural extension of this type of clustering would be to actually combine the ministries into these seven areas.

Initial evidence suggests that a large proportion of the population would support interacting with government electronically. A recent study benchmarking the demand for e-government services by citizens and businesses found that almost two out of three on-line adults, or 65%, have conducted an e-government transaction at least once. Almost one of five adults, or 20%, who use the Internet have conducted an e-government transaction in the last 30 days. Almost half of the citizen users, 47%, reported that they would like to use the Internet to renew their drivers' licences, vote in major elections—38%—and access one-stop shopping for all government services regardless of jurisdiction—36%. Almost half of the business users, 43%, reported that they would like to use the Internet to obtain or renew their professional licences and access one-stop shopping to apply for new business licences and permits—39%. Business users express a strong preference for a single federal e-government portal.

There is a definite demand for changing the way government operates. The report also found that e-government is widely accepted and seen as a growing trend and value to citizens and businesses. Citizens and businesses are more satisfied with their e-government experience than with traditional service delivery. Citizens and businesses understand and expect certain e-government benefits such as efficiency, time savings and cost-effectiveness.

The Ontario Chamber of Commerce will be surveying its members on the issue of electronic government and we'd be happy to share with members of the Legislature an Ontario perspective on this.

A 1998 study from MIT showed that companies that invested heavily in information technology showed higher market valuations than companies that did not invest substantially in IT. The study also showed that computer investments overlaid on to old ways of doing business often lead to disappointing results. The greater positive results came from companies that invested heavily in information technology and substantially restructured the way they operate.

The lesson for the provincial government is that it should not only look at utilizing available technology as much as possible, but in order to be effective it must also look seriously at restructuring how it operates.

As the provincial government embraces the new technologies available, one of the key advantages will be a greater sharing of information within government departments. Departments will no longer be able to say that they are unaware of what the other department is doing. This will lead to a reduction in wasteful duplication and even contradiction from one department to another. Government procurement is likely to be an area where the government would see a substantial cost savings. Recent studies by business and the public sector showed that procurement costs could be reduced by as much as 50% with e-commerce.

The Ontario Chamber of Commerce encourages the government to seriously look at how it can utilize

Internet technology to increase its effectiveness and efficiency as well as to enjoy cost reductions. The provincial government has made a good start with Ontario Business Connects on-line service and through the Service Ontario kiosks. However, we feel much more can be done.

While many of the issues that we have raised are not strictly covered by Bill 88, we believe that Bill 88 is a step, an important one, in making Ontario a leader in e-commerce. We encourage the government to work quickly to resolve the issue of Internet taxation and to look at ways that Internet technologies can be utilized for better government.

Thank you again for your time. We're available for questions. I think we have a few minutes.

The Chair: Yes, we do have about 10 minutes for questions so we'll start with you, Mr Kwinter.

Mr Kwinter: I listened with interest and also a little bit of uncertainty. You're absolutely right; many of those issues that you raise are very important. Unfortunately, they're not the responsibility of this particular committee. What we're really dealing with is Bill 88 and the legality of using an electronic signature and electronic commitments to make it legal. I see that you don't have too many concerns about that. You sort of applaud that particular initiative. Having said that, let's talk about the things you did talk about that I have a lot of interest in.

One of the concerns—and I raised it at the end with Ms Langford of the Canadian Association of Internet Providers—is that we keep hearing that the Internet is going to change business as we know it; it's going to level the playing field. One of the other presenters said they do business in British Columbia and they don't know whether it's two guys in a garage or a huge corporation. They don't really care as long as they supply what they want. That is one of the big advantages of e-commerce.

The strength of Ontario is planning but also a great deal of accident; propinquity, as they call it. We happen to have this huge infrastructure next to the largest market in the world where we can really be competitive. We can be competitive because of our low labour costs, our health care, all of these things. My concern is that we really have to address how that is going to change with e-commerce, with the ability of countries all over the world to compete on a direct basis, with the ability to, as you say, circumvent the retailer, circumvent the distributor and create a totally different playing field.

As representatives of the Ontario Chamber of Commerce, you have obviously given some thought to this. What are your solutions? You say that we can be in the forefront, but at the same time I hear all of these other factors that could in fact make us less competitive rather than more competitive.

Mr Robson: I think we're doing very well in the electronic economy. The big loser could be government, but our people are going both ways. The Americans are selling here, there are international people selling here and we're selling there.

If I can quickly digress, many of you are familiar with our awards which we give every year. In one of the awards last year, the runner-up was Jenny's Floral Studio in Sarnia. They were the first group to be on the Internet. When you go on Jenny's Floral Studio you get a virtual bouquet free when you tune in. I went down to Sarnia to present the award, because it was the runner-up award, and they were telling me how the day before, for example, a fellow in Houston had ordered some roses for his wife who was right down the block. So they are facilitating from here, I assume tax free, a service several hours' flight away from Sarnia. I think that's an example of the fact that our people can certainly compete. It's just that we want to make sure there's a level playing field in terms of taxes, because as we outlined and as you all know, you can be in a garage in the Caribbean doing business. You don't have to be in Vancouver. So we're at a competitive disadvantage by that 15% of provincial sales tax and GST. I'll defer to Mary and see if you have a comment for Mr Kwinter.

The Chair: I'm sorry, we're starting to run out of time. Sorry, Mr Kwinter.

Mr Martin?

Mr Martin: I have no questions.

The Chair: Mr O'Toole?

Mr O'Toole: The chamber is always an important observer of what's going on and how we can remain competitive. I'm sure you're supportive of this legislation, which is positioning us to be competitive.

I wouldn't mind perhaps giving the person with you—Atul, is it?

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Mr Robson: Atul is our chief economist.

Mr O'Toole: Atul, with respect, the tax question isn't in this bill, as you know, but it is one of the recent questions in everyone's mind about who gets the money and how. It's a very small part of the overall economy at the moment, but we're all positioning ourselves—the whole world is, I guess—to say that's where a lot of the transactions will occur. What is the general tone, while addressing, perhaps at the same time, the issues of privacy and confidentiality and use of the information itself—like what is the ultimate database going to do for me if I go to sell that database I've developed?

Mr Atul Sharma: You've raised a number of issues there, and I'll ask Mary to give some comments as well.

I think you're right. Right now we are in the infancy of our e-commerce revolution. I think there will be a point in time where you can't have a company in Ontario which does not have an Internet presence. Certainly the way the Internet operates will fundamentally change over the next four or five years. Currently, Web sites are simply locations of information. Web sites are on the verge of becoming interactive, so if you went to, say, a travel Web site and you wanted to book your flight or you booked your flight and you wanted to make sure that, if you're visiting your sister, your sister knew when your flight was, the Web site would automatically forward the information. If your flight was delayed, it would be able

to interact with whatever computer you were using and tell you, "Hey, your flight's been delayed by 20 minutes. Don't show up when you were planning on it."

That's certainly where it seems to me the future is headed, that there's going to be greater and greater interaction and connectivity between consumers and producers and people who are selling services.

One of the areas we have raised in our presentation is certainly that government needs to be aware of it and get involved in this as well because there is a fundamental change in how government operates with its citizens. I think that's going to lead to a restructuring of the way government is established. We've outlined seven clusters that are currently available in the IT area.

With respect to the privacy issue, as your previous presenter said, there probably isn't an Internet service company that doesn't take that issue very seriously and they wouldn't stay in business very long if security and privacy weren't their first concerns. Mary might have a few comments on that as well.

Ms Mary Webb: I think when we have a development, such as e-commerce, that is potentially so widespread and so hard to define, the importance of Ontario remaining on top of all the international developments is extremely key, particularly development in the States. We're seeing the US wrestle with this as well. You don't want to hamper the development of e-commerce, so do you put a moratorium on the taxation, which is what was suggested by Congress, a three-to-five-year moratorium? But then that's unfair to the traditional methods of business. I think this is an area that requires regular review to see where our main competitors are going, and the input from business is just very key.

Mr O'Toole: Again, without prolonging the debate, there's a discussion paper with the Ministry of Consumer and Commercial Relations. Many of the same issues will be discussed, I'm certain, but it may delve into the consumer aspect and their responsibilities or lack thereof. I'm sure you'll be making presentations to those as well.

The Chair: Thank you very much, Mr Robson, Mr Sharma and Ms Webb. We appreciate your submissions this afternoon.

Mr Robson: Thanks again for having us.

CANADIAN BAR ASSOCIATION—ONTARIO

The Chair: The next presenters are Jim Blake and Gabor Takach. Mr Blake?

Mr Jim Blake: Yes.

The Chair: Oh, you're Mr Blake. OK. Mr Takach, did I say your name correctly?

Mr Gabor Takach: Takach is one of the pronunciations. You'll hear another one I think later on this afternoon in a presentation given by my cousin from McCarthy's.

The Chair: And is that the same pronunciation?

Mr Gabor Takach: No. It's the same name; we just happen to have adopted a different pronunciation. There

is no right way to say it. At least, we have agreed to disagree.

Mr Blake: Ladies and gentlemen, at this point I believe you have been handed out a fairly brief presentation paper from the Canadian Bar Association. Does everyone have one? We recognize that you are going through a series of lengthy hearings. We've tried to distill this to something very brief.

First of all let me say, for the benefit of some who may not know, the Canadian Bar Association—Ontario is an association of lawyers, judges and law students in Ontario. One of our many purposes is, obviously, to present positions with respect to reform and improvements in legislation and law, and obviously as stakeholders we have a very real interest in a successful and prosperous economy in Ontario. That's the basis upon which we're making a presentation today.

We've split this presentation into three parts. Part one deals precisely with Bill 88. Although today you may have heard legislation dealing with various aspects of substantive law, the function of Bill 88 is enabling legislation to facilitate the effective use of e-commerce or electronic communications. We must say that this is a most welcomed step forward and in our view is strongly supported by the legal community and our clients.

It's very fundamental that laying down a clear and general framework to cover certain aspects of e-commerce leads to legal certainty and the resulting confidence of both business and consumers, which I think is fundamental to the growth of e-commerce. One of the key things we've all heard is confidence in the system.

The other aspect, of course, is the mystery of whether or not and to what extent it is effective as a legal document or as legal documentation. We regard Bill 88 as being most welcome.

Secondly, it does achieve the goal of harmonizing e-commerce rules across Canada, because it's based substantially on the Uniform Electronic Commerce Act which was adopted by the Uniform Law Conference of Canada in 1999.

That being said, as we all know, this legislation is framework legislation and there will be substantial areas that will be covered by regulations as we go down the road. Those regulations are very important, and so we regard the drafting of those future regulations as being a work of some effort that we would hope would result in draft materials being published in time for all stakeholders to have a look at the words just to make sure there isn't some difficulty that may have been unforeseen by the drafter.

So what we're really here to do is urge speedy passage of this legislation. On the other hand, the publication of regulations, which will have to happen before the legislation comes into force, is very important, and we think it's important that the community and the stakeholders have a chance to look at that material just to ensure there is not some oversight that the drafter may not have considered.

Although we're urging speedy passage of this bill, and I always hate to suggest any amendments, we would suggest one small amendment. That relates to clause 12(2)(c). That paragraph in the legislation deals with the retention of electronically generated documents. You'll notice that (c) talks about retaining identifiers of the origin, destination, date and time when it was sent and received and so on. This is obviously a very desirable standard and we fully agree with it. But water under the bridge is water under the bridge, and we would simply ask that the words I have indicated in the paper, the words "after the day this act comes into force" be added in the second line right after the word "received," so that electronic transactions that are already on the books and have already occurred—people may not necessarily have kept that sort of evidence of time of transmission, when it was received and so on. We fully support the legislation on a going forward basis, but we suggest there be some protection to this retention obligation with respect to transactions that have occurred prior to this legislation coming into force.

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The second part of the paper deals with what I would call the next, or the second, electronic commerce act. I just pause for a moment to re-emphasize that what we have before us is Bill 88, which is enabling. It's welcome and we're strongly urging speedy passage. But it is necessary that we continue the effort to keep Ontario at the leading edge of e-commerce; we think that's important to Ontario-based businesses. And there are some things that are substantive law and changes to substantive law that should be considered.

We're not suggesting any particular solutions but you'll notice the first one I talked about was spam. The sending of unsolicited commercial communications by electronic mail is probably undesirable for many consumers, businesses and service providers. As we all know, when it's sent in heavy enough volume, it may even disrupt the smooth functioning of interactive networks. Certainly, as a very minimum, unsolicited commercial communications by electronic mail should not result in any additional communication costs for the recipient. I think that's a fundamental thing that we should give consideration to in future legislation as soon as possible.

Another thing that might be considered is whether we should provide for an opt-out register where citizens and businesses could establish themselves on a register where they would say, "We do not want to receive unsolicited materials." These are future considerations, but I think they're important and I think they should be dealt with speedily.

The second general area is the question of error correction. When I talk about this next item, think of a person sitting down before his computer screen and he's about to place an order for stock electronically. When a person places an order through an electronic agent, which we know is not a human on the other end, it's a computer, should there be a statutory requirement that the

proposed order be once again restated on that window so the person knows how many shares of company X has he really ordered and overall cost is this, and given a second chance to confirm or cancel that order? Now many businesses in fact follow that practice as a good standard, but the question that should perhaps be considered is whether that should become a statutory requirement. That's a consumer protection bit of legislation that should be considered as we go down the road in a second e-commerce bill.

A third consideration is place of establishment. Place of establishment is important not only from a conflicts-of-law point of view of where the contract is made; it's probably also very important for the tax folks when they get around to it. As we all know, a Web site can be totally offshore, the supporting technology can be totally offshore. I think there probably will need to be a statutory provision that establishes that the place of business of a business providing services through the Internet is not the place where the technology supporting the Web site is located or accessible but instead is the place where the actual economic activity is pursued: where is the factory, where is the office from which the goods are sent and things of that sort. This has both a conflicts-of-law aspect to it and a tax aspect. At some point, future legislation is going to have to address that.

Quickly, although I'm sure the list will go on and on, the final thing that occurred to us was that you might consider whether consumer protection provisions are necessary with respect to contracts that really amount to games of chance, lotteries and betting transactions. We all know that there are many betting sites in various offshore locations—I'll not mention them but they tend to be in the Caribbean—and whether there should be some consumer protection legislation to cover that type of contract—that's a class of contract—is something that should be considered.

And then I'll take us to part three. We've all seen the need for Bill 88 and the speed with which our economy has been changing and the increased use of electronics for everything from contracts to security registrations, even land registrations. Everything is coming on stream quite quickly. I'll just do a little further aside. The Ontario government is now at the front edge and has commenced incorporating companies electronically as well. So increasingly we are doing more and more things, which is good. It keeps us at the front edge of what the business community is looking for and it keeps us competitive. But there is one particular area where Ontario has historically, in Canada at least, been a leader, and that has been in the area of personal property security legislation. As you know, many national lenders are based out of Ontario and it's important that we keep our PPSA legislation at the front edge, just as we're bringing in a Bill 88, which is generic enabling legislation. PPSA legislation of course is specific. But I think it's very important, and our two committees think it's very important, to keep that legislation as sharp and as close to the front edge as possible because it will give our

Ontario-based businesses a distinct advantage, certainly throughout Canada.

Those are the submissions we are making as a formal presentation. We'll open it up to questions. Before I do, I just want to mention that we're making this presentation as a joint submission between two sections of the Canadian Bar Association. One section is the business law section, and the second section, which Gabe is representing, is the information technology and electronic commerce section. But our interests are very much in step on this and we thought we'd make this paper together in a way that hopefully you would find helpful.

The Chair: Thank you very much, Mr Blake. That was a nice, concise, very short presentation, so we do have enough time for some questions from committee members. We'll start with Mr Martin. You have about seven minutes.

Mr Martin: I appreciate your presentation and some of your thoughts on both the bill and some of the context and future considerations that perhaps we should be looking at here. I suggested in some of my opening comments this morning that we ought to look at this as well in the context of the evolving economy in which we all have to work because everything is interrelated these days, I guess.

I want to ask you, from your experience in the legal profession, given that we have your presentation here, is there anything in this bill, moving as quickly as we are to make it legal to sign contracts via the Internet without the attendant, we suggest, attention being paid to issues of confidentiality and privacy, that worries you?

Mr Gabor Takach: Mr Martin, we see this legislation as essentially following the evolution of communications and contract law and relationship establishment in the legal sense moving from the written word to electronic communications. We see our clients proceeding in this area whether or not they are essentially ahead of the law, and they are in fact making decisions on their own with or without this kind of legislation. So we see this legislation as being extremely important to catch up, effectively, with the current practices as they are evolving. The legislation is extremely helpful to the profession in allowing us to advise our clients with certainty or at least to confirm with certainty, the advice we have been giving to our clients with respect to the evolution of this area in the ordinary course.

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There are clearly some issues that are arising in terms of privacy and the movement of information which probably have been there with the written aspects of communications and relationships, but not to the same volume and not with the same speed as they are being facilitated by this new instrument, and they will have to be looked at. But we don't see any reason why we should be holding up this stage, which is essentially the first step in making sure everyone understands what we see is practically being done by sophisticated users of the electronic communications means and in fact given the certainty that's needed for all.

Mr Blake: I'd also mention, as you know, that there is a specific privacy study underway in Ontario mid-September. It's a consultation paper, and we as the Canadian Bar Association were invited to make submissions on privacy issues as well. But that's separate legislation, and the federal folks have done theirs and Ontario is going to do its in a way that will cover the non-federal aspects of our business in social communities. That's a very strong and perhaps difficult topic, but that topic is being dealt with in separate legislation and a specifically dedicated consultation is underway starting I think September 15—just to underscore your concern about privacy. We're all alert to it, and that is probably going to be a much more difficult bit of legislation than this. We regard this as beneficial and relatively non-controversial. It's the privacy stuff that is going to be more difficult.

Mr Beaubien: More of a commentary than a question, but if you want to respond to it you're more than welcome to: I certainly agree with the vision you have with regard to this bill. Not only are you looking at Bill 88 but you're looking past that, and I think that's important. In part two you mention spam, and there's one individual in the province of Ontario I'd like to spam a little bit. At this point in time I guess I don't have legal recourse to do it.

All afternoon I've heard buzzwords like "critical mass," "economies of scale," "proximity of market," and then one other presenter made the comment in their conclusion that e-commerce saves money for consumers, for businesses and for government, money that's now spent on lost travel time and lineups at counters. Being from rural Ontario, I still have the phone with the box under it. You're too young to remember those.

Mr Martin: No, I'm not. I was one long, two short.

Mr Beaubien: The point I'm trying to make is that in many parts of rural Ontario, and as for my colleague across from northern Ontario, we do not have the infrastructure and we see governments closing offices, services, we see banks closing services and they say, "Well, go on the Internet," use their e-mail. People don't have access to these things and consequently are faced with driving long distances. As one presenter said, it's not cost-effective. You're losing time.

There's a trend in this society that we provide a lot of services for the urban centre but the small, backward—and I don't think northwestern Ontario is too backward, but the reality is that we do not have the infrastructure in many places. Consequently, we're expected to drive the long distances, we're expected to be as efficient as that person in urban Ontario. So the mood, the atmosphere, is not conducive to being very competitive. How do you respond to that?

Mr Blake: Well, there are two things. The first response is that this is enabling legislation. It applies equally throughout the province.

Interjection.

Mr Blake: No, but it's enabling. Nobody has to use electronic commerce if they don't want to.

Mr Beaubien: Why would you?

Mr Blake: Nobody has to if they don't want to or if it's not convenient. However, I do believe there is a fairly serious effort to upgrade the telephone communication systems in more rural areas. For instance, I'm from the 705 area code myself, and I know that the connection speed in our area is being upgraded. It hasn't happened yet, but it's close. But it still works reasonably well for me. I believe there is an effort to upgrade the speed of connection throughout the province, especially in rural areas, and I believe there is a government initiative to that effect. It's certainly the case in Simcoe county. I know you don't regard that necessarily as being—but it is area code 705; it sort of counts, you know.

Mr Beaubien: But this is the point. We can kid about it, and we can talk about protecting people and making sure that people are treated equitably, but in many situations in Ontario people don't even have access to that. It's funny that I'm listening here to you people talking about, "We've got to protect these people," and these people don't even have the chance of being taken advantage of.

Mr Blake: I understand your point, but in my view that doesn't have anything to do with the enabling legislation. First of all, I believe most places certainly have the telephone. So the only thing you need beyond that is the computer at the end of the telephone and then you're away.

Mr Beaubien: Unless you've got a party line.

Mr Blake: Did you say "party line"?

Mr Beaubien: Yes.

Mr Blake: Yes, I recognize the problem of party lines, because it doesn't work. But if you remember a few years back—and it hasn't been that many years—the first step was to increase the area where it was not a long-distance call. That was very important so you wouldn't have a long-distance call to get to your service provider.

I'm using myself as a guinea pig. At one time, it used to be a long-distance call for me to get to Barrie, and Barrie was the only place where I could get a service provider at that time. It would have been a long-distance call every time I went on the Internet. One of the things that happened about five or six years ago was that the area codes expanded so that most areas are able to get to a place where there is a service provider as a local call, in which case your cost of communications throughout the world is free. That was an important step, and that was a few years back.

The next step that's happening is that many areas of Ontario are being updated. It doesn't happen instantly everywhere, but it's being progressively implemented that the speed of connection is being upgraded so that you have a much faster connection. If the rate of change continues the way it has in the last few years, I would think there would be very few people with serious complaints.

On the other hand, we are faced with a situation where there is a large population base in Toronto. I'm talking about the future of legislation now. There are issues of protection which will arise, and they should be dealt

with. It's not a question of waiting until the last person has got his last computer. I guess that would be my only real answer.

Ms Mushinski: Mr Chairman, I have just one question, and it deals with spam. The whole issue of unsolicited commercial communications has certainly been a serious one for my constituents, in terms of junk mail which they receive on a regular basis. It would seem to me that electronic means or electronic equipment that one has would provide an advantage to blocking unsolicited mail.

Mr Blake: It does, but let me tell you what happens. You block it. They've got a computer at the other end and they change one little element. You get the same organization, but they've changed it. As soon as you block it, they go to the next combination and just go click, click, click, and they keep shooting it at you. That's the problem. Blocking is wonderful if you've got ordinary folks. But then you've got really dedicated people who want to get their message out, or whatever it is.

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Ms Mushinski: OK, so how do you protect the consumer?

Mr Blake: When I go to my mailbox, you see, I get this wad of stuff and I could—

Ms Mushinski: Annoying as hell.

Mr Blake: Yeah, I know. One of the things I could do is, apparently there is a system—I'm talking about stuff coming through the post, that kind of mail, hard copy. There is a method where you can call up and register and say, "I don't want it." People who observe the rules—it's voluntary—will take your name off the list. The same thing is true with these calls that come through on the telephone at night. You can request that your name be taken off the list, and they're supposed to do it, but it's all voluntary. This is just another method of receiving this stuff.

All I did was pose the question. One is, for sure it shouldn't cost you money to say no—that's the first point. Although it costs you time, for sure it shouldn't cost you money. The second thing is whether there should be the ability to create a register which perhaps is at a higher standard than just voluntary. I'm just raising it.

Ms Mushinski: I appreciate that.

The Acting Chair: Mr Kwinter.

Mr Kwinter: Thanks for your presentation. Your organization is key to this whole thing. As you said, Bill 88 is framework legislation and then you've got to build on that. It's going to have to come from the Canadian Bar Association, the Ontario bar association. They're going to identify what the problems are and how to make your particular activities comply with that.

I'll give you an example. We had someone here from Teranet. I was the Minister of Consumer and Commercial Relations back in 1985 and had the responsibility of introducing Polaris as a pilot project. Immediately, I was besieged by title searchers who said: "You're going to

put us out of business. You can't do that." There was a big debate that went on, and I was telling the presenter, who left here, that it was quite gratifying to see that 13 years later Teranet is a fact, a fait accompli, and that's how you do your title searching. You don't have to go to two different places to do it, and it's all coordinated. You really have to bring everybody along with you to do that.

The other thing, another issue I had to deal with, was PPSA. I don't know whether you remember Fred Katzman or if he's still around, but he chaired this advisory committee to the minister. It was like a make-work project. He was in for years; for years they would come to me. One day they invited me to sit in on a meeting. I sat there and they spent an hour debating one word, actually debating one word. When I left, I said to my assistant, "This is cruel and unusual punishment. No one should be compelled to sit on that kind of meeting." It would seem to me that if you're bringing forward these various initiatives, you're going to have to get yourselves onside first and then come forward to the government and say, "Here is a problem we've identified. Here is the solution."

Mr Blake: If I may, isn't that what we did today? We even gave you a few little words to insert, if you recognize that question of grandfathering as being a politically realistic issue. Basically, as you can tell, our thrust was that we support this wholeheartedly and agree that it should be passed right away. But we have one little quibble, and we gave you the words. The whole point is whether you're going to grandfather electronic transactions that have occurred before now, before the date this comes into force. We agree with it fully as a going ahead thing. When people know the rules, they'll keep those records of when they got it, the proof of receipt. Obviously you keep the main document, but now you're going to keep the main document plus how you got it and the proof of receipt.

Mr Kwinter: OK. Can I ask you something about that? When you say you're grandfathering it, are you recommending that the only part is the retention of the transmission information?

Mr Blake: Yes, only that very last little bit.

Mr Kwinter: Not the document itself, just the information of the transmission.

Mr Blake: Just how you got it and what time. A lot of people don't have those time stamps any longer. That's our only comment, just that time stamp stuff, and the change that we propose would only grandfather that. It doesn't grandfather any other retention rules. On going forward, the whole thing of course is in place and we support it. It's just that water has gone under the bridge for keeping those time stamps. That's the only point.

Mr Gabor Takach: Mr Kwinter, I wonder if I could just try to address what I thought was part of your question as well with respect to the PPSA. The point we were trying to make with item 3 or part 3 of the presentation was that there is a revolution going on in terms of the asset mix of various companies which requires attention and it requires input from the legal

community, the user community, the banks and the borrowers. But first and foremost it probably requires a vision or a recognition and some leadership probably coming from government to the following effect.

I think it was in 1998 where there was a Globe and Mail headline which suggested that as of June of that year over 50% of the capital cost of capital assets acquired by companies in the US and Canadian economies consisted of soft assets; over 50% of the capital cost. These are assets that you can't touch, you can't mortgage in a traditional sense—

Mr Kwinter: And you can't put a lien on it.

Mr Gabor Takach: You can put a lien on it, but there isn't the credibility that's associated with it. The point we're trying to make is that where there are assets such as real estate and machinery located in any particular province, that's the province whose rules will apply as to the effectiveness of the security that's placed on it for the purposes of borrowing and providing capital for the growth of that business. With respect to the intangible property, the general rule is that the various jurisdictions cede the rule-making jurisdiction with respect to borrowing on the strength of soft assets to the principal place of business of the borrower. That's an existing state of affairs. That's the uniform commercial code in the US, and most of the provincial statutes in Canada provide for that ceding of jurisdiction.

We see that as a framework which will ultimately allow the enlightened jurisdiction, the one that picks up the ball in this process, to come up with a set of rules that will make it easier for businesses to raise money on assets which are soft assets because they ain't got any other assets. If the borrowers are located in Ontario and are coming to Ontario simply for the purposes of being able to take advantage of raising funds in Ontario with enlightened rules, that will attract business to Ontario. So the point we're trying to make is that we should take a look at that state of affairs, form a partnership between government, industry and the legal community to recognize it and then come up with a plan as to how to make ourselves the Delaware of the PPSA regimes. Delaware has been so successful in attracting businesses to incorporate there. That's really the whole point.

The Chair: Thank you, Mr Takach and Mr Blake. We really appreciate your presentation this afternoon. Thank you for taking the time to come and address us.

Mr Takach, I was just going to suggest that if you wanted to stick around for half an hour, you might see your cousin.

Mr Gabor Takach: Say hello for me.

COMPAQ CANADA INC

The Chair: The next presenter is Mr John Challinor of Compaq. Good afternoon, Mr Challinor. How are you?

Mr John Challinor: Good afternoon, Madam Chair. On behalf of the senior management team at Compaq, we want to thank you for the opportunity to address this

committee of the Legislature about Bill 88, the government of Ontario's proposed Electronic Commerce Act.

As many of you know, Compaq Canada is a major information technology and services supplier to the province of Ontario. The province has been a valued Compaq customer for more than a decade. What you may not know is that Compaq is the largest electronic commerce supplier in the world. Together with our strategic e-commerce application partners—Microsoft, Oracle, SAP, i2 and Siebel—we power 90% of the world's security transactions, 77% of the world's lottery transactions, 60% of the world's interbank transactions, 50% of the world's 911 calls, 50% of the world's cell phone billings. We support the top 32 of the world's largest telecommunications companies, 106 of the world's largest stock exchanges, 34% of the US Web server market, which are basically ISP providers, Internet providers, twice that of our nearest competitor.

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We market the full spectrum of systems, partner applications and services that support the implementation of e-commerce solutions. These integrated solutions allow our customers to Internet-enable shared business processes across their customers, partners, suppliers and distributors.

When it comes to e-commerce, we have a vested and knowledgeable interest. When government at any level proposes legislation dealing with e-commerce, we want to ensure that our interests and those of our customers are understood and, if necessary, protected.

In principle, mirroring its colleagues at the Information Technology Association of Canada, Compaq Canada is supportive of this legislation. Any legislation that is characterized as "enabling," "minimalist" and "harmonized" and is described as "removing barriers so that other government program-based initiatives can proceed without needing individual enabling legislation" has our support. As the proposed act is written today, it largely passes muster.

However, we do wish to ponder how forward-thinking in nature the proposed act may be. For example, it does not apply to such documents as wills, personal powers of attorney, most negotiable instruments, most land transfers or election documents. The reason given for excluding these kinds of documents is that they require more detailed rules or more safeguards for their users than can be established by a general statute. The context for our questioning this missing component of the proposed act is not today's environment but the future, and the near future at that.

According to a report released by Nortel Networks Corp, the global Internet economy will grow sixfold to \$2.8 trillion by 2003—that's three years from now—accounting for 7% of world gross domestic product. Canada's Internet economy could climb to \$155 billion in revenue and create 180,000 incremental jobs.

Canada and Ontario are certainly well positioned to benefit from this new economy. According to a study prepared by the Canadian e-business round table entitled

Fast Forward: Accelerating Canada's Leadership in the Internet Economy, Canada is already a leader in global e-commerce. Its strengths lie in a strong infrastructure—although Marcel Beaubien will disagree with that comment—high levels of Internet penetration and an early lead compared to other countries on the policy front.

For example, Canada is one of the most wired nations on earth and its Internet access costs are the lowest among the G7 countries. What's more, Canadians have been quick to adopt Internet technology. The most recent figures show that Canadians, on a proportional basis, access the Internet more and stay on-line longer than Americans do. But we have been slower to embrace the Internet as an e-commerce mechanism than the Americans. International Data Corp, for example, predicts that Canada's business-to-business e-commerce will be only 7.7% of US levels by 2003, down from the current levels of slightly less than 10%. At this rate, in the Internet age, the individual growth and future prosperity of Canadians is threatened.

Governments at all levels should be looking at new legislation that creates an environment where greater use of e-commerce is encouraged. Governments at all levels should be rescinding legislation that discourages use of e-commerce in any way. No more is that more fundamental, in our view, than those basic components that the proposed act chooses to exclude.

We don't wish to oversimplify the challenge faced by government in dealing with privacy matters. We at Compaq fully understand the issue. But we want to assure you that the technology exists to overcome these challenges. We believe that the only stumbling block to full empowerment of Canadians in their use of e-commerce is legislative, and inherent in that, gaining their confidence that their most personal and privileged information can be competently managed by various public and private sector institutions.

Further, the act does not override existing provincial laws and regulations that already permit, regulate or prohibit the use of electronic documents. Given our earlier thoughts, if that is the case, just how effective is the proposed act in truly cutting red tape?

In closing, we at Compaq acknowledge that new provincial and federal privacy legislation is probably required to respond to the matters we have raised and which you have excluded. Let me assure you that these are not sticking points in gaining Compaq Canada's support for Bill 88. You have our support, and you also have our thanks.

If I might, Madam Chairman, Marcel Beaubien asked a question of the previous presenter about his particular situation and I might be able to assist in answering that question.

The Chair: Would you like to offer it as a part of your presentation? You have lots of time.

Mr Challinor: Sure. He has an infrastructure challenge in his community and it's not enabling his constituents to use the Internet for whatever purpose they

choose to use it, be it education, e-banking or just basic communications with their families, friends and so on. This is not an uncommon situation in this province or in fact across the country. I can only offer a personal observation, as well as a professional one.

On a personal level, in another life I am a councillor from the town of Milton. This is my third term. Just recently we worked with the CRTC and Bell Canada to expand local dialing into our community. The effect of that has saved millions of dollars both for business and for private citizens in terms of use of the Internet and obviously use of the telephone with their various customers.

I would suggest, based on that experience, that your community or the communities you represent make contact with Bell and get into partnership with Bell to work on expanding the infrastructure they currently have in your community. That's about the only way it's going to happen. Legislation is not going to make it possible. It's going to require an investment by Bell and an investment, quite frankly, by your community.

On a professional level, once you have the basic infrastructure in place, you'll find service providers who will come into the community to offer a service. But I think they recognize that the current situation in some of the communities you represent just doesn't present itself as a business opportunity for them. It takes time. It took us about three years. Ten years before we finally received CRTC approval, we held a survey in our community and expanding the service was rejected because of the costs associated with it. I should mention that the cost 10 years ago was about \$10 for a basic subscriber; it dropped to \$7 in a matter of 10 years, and we now have the service.

The Chair: Thank you very much, Mr Challinor. We have about seven minutes from each member of committee. I guess we start with Mr Martin.

Mr Martin: Thank you very much.

The Chair: No, I apologize, Mr Martin. We don't. We actually start with the government side. I believe, Mr Martiniuk, you indicated you wish to ask some questions.

Mr Martiniuk: Yes. Thank you, Madam Chair.

I am just interested in your conclusions, because they seem somewhat inconsistent. On page 2, in the second-last paragraph, you state that the statistics show that on a proportional basis Canadians access the Internet more and stay online longer, so we seem to be familiar with it—and I've seen statistics that would show that—but for some reason our business-to-business e-commerce, I take it from reading between the lines, is at the present time only 10%, proportionately, compared to the United States. To what do you attribute that?

Mr Challinor: I should have brought a copy of Fast Forward with me, but the study concluded that Canadian business was slow to adopt e-commerce. They didn't feel it was a business priority. They felt that their customers today were quite satisfied with buying products and services through the traditional bricks-and-mortar method. However, in a survey that was done for the study group, 84% of them felt it would be a priority to embrace

e-commerce and have that capability within the next four years.

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Mr Martiniuk: I'm just curious as to why they're slow. Is it that we have more small businesses, for instance, or medium-sized rather than large businesses in Canada compared to the United States?

Mr Challinor: I think that's a common sense conclusion to draw: we have many more small businesses.

Mr Martiniuk: On the top of page 3, you talk about governments encouraging business e-commerce, among others. What steps are you suggesting?

Mr Challinor: Government has to show leadership, principally, Gerry. I think the province of Ontario is demonstrating that, although the government and the staff of the province wish they could move faster. It's time and money. But it's the use by government of e-commerce to provide services for consumers and taking leadership in regard to actually providing services.

Mr Martiniuk: You're talking about leadership rather than tax breaks or a legion of other possible things?

Mr Challinor: Yes. I think that tax breaks are not the answer. In today's environment, government really needs to provide the environment as opposed to the actual tax incentive itself. Although that said, we certainly were supportive of the last budget, which provided incentives for ISPs.

Mr O'Toole: Just very quickly, I wanted to put on the record that you refer to section 31 in your presentation, that is, the exclusion of certain business or transactions. My first reaction would be, if it's enabling legislation, if it isn't required legislation, why would they exclude certain options? There are certain kinds of groups in the public sector that aren't included, as well as powers of attorney and negotiable instruments or codicils. Again, I'm putting it on the record, and you did make the comment that you're surprised those were excluded.

I'm going to tie it to one little thing. The whole issue I've heard is the issue of trusting the environment that we're operating in, the confidence. This is trying to establish a framework for that confidence. Maybe this sends a signal that there isn't trust, because you won't, to some extent, transact financial or legal kinds of commitments over this electronic means. If you want to respond, then do.

Mr Challinor: Clearly the conclusion we draw is that changes have to be made to the privacy legislation federally, and whatever falls out of that provincially, to enable those kinds of transactions to take place. But along with that there has to be confidence expressed publicly and demonstrated to the public that they have no need to be concerned, that in fact you can conduct this business in an e-commerce fashion. Today you can't.

Certainly the last presenter was quite correct. We do it ourselves: contracts are done electronically and you're not physically signing the document, you're sending an e-mail attachment. We certainly have the ability to attach an electronic signature, but it's a different kind of relationship than we're used to.

To answer your question, you're going to require a different kind of legislation. If I might comment on public confidence, the government and the banking system have a fair degree of confidence from the public with respect to their ability, and I think that the technology industry has the technology to inspire that confidence. We have it in place today. We're using it ourselves. The banking institutions are using it. A number of our customers are using it. In my view, it's a question of how quickly the legislation can catch up to the technological reality.

Mr Kwinter: I want to follow up on that because that seems to be your basic comment or criticism of the legislation, that it specifically excludes certain activities, where you think this thing should be totally inclusive if that's where we're going.

The question I have for you is that E-SIGN, the US statute, has basically the same exclusions—not exactly, but they certainly exclude wills or testamentary trusts, most of the Uniform Commercial Code, court orders or notices, notices that utility service is to be cancelled, and it goes on and on. Why is it that all of these different jurisdictions seem to exclude these things when your opinion is that there's no need for anyone to be excluded? Do you have any comment on that?

Mr Challinor: I think it comes down to the sense of confidence that staff within a government jurisdiction have and elected representatives have in the technology and their sense of the confidence the public would have if the service was provided a different way. I think it has to be demonstrated by government, perhaps in partnership with ourselves, that in fact it can be done, that it is being done in many ways already. In many ways we are well ahead of the legislation today. It's being done informally and accepted.

Mr Kwinter: I also noticed that in our legislation we exclude the Election Act or the Municipal Elections Act, and that's an area where certainly in some jurisdictions they try to have electronic voting, with various degrees of success—some highly successful, some not so. There's got to be a reason why these have been specifically excluded. Maybe the challenge your industry has is to address those concerns and to get the assurance that the technology is there and it can be done.

Mr Challinor: I agree with you 100%. We have conducted pilots across North America with various pieces of security technology to demonstrate our ability to provide this service to the public, with varying degrees of success. I think one of the things you're seeing move quite rapidly today is the use of smart cards, some of which does cross into this area of legislation. I know this province is looking at it and has looked at it for some time. I think discussions have taken place at least since 1988 about smart card technology.

So I think, Monte, it's a question of a partnership where we pilot certain services that perhaps may not provide as much public angst as others might. I think the comment you made to the last presenter about the necessity of involvement by the Canadian Bar Associ-

ation and the Ontario bar association is right on. I think they have to be involved in some of these things, particularly in the area of wills, living wills, powers of attorney, those kinds of things. It's pretty key stuff, but again, we've got the encryption technology, I believe, to manage that process. It's a question of how we educate the public and the law profession and others that's acceptable.

Mr Kwinter: OK, thank you.

Mr Martin: You certainly paint a very exciting picture of the present circumstance and the future for e-commerce in Ontario and Canada, I think somewhat different from the presenter two before you who said that Ontario is not an attractive place, Canada is not an attractive place; she herself is setting up a dot-com company and she's looking at Colorado, I believe. We had other presenters today suggest that our tax regime is one of the biggest obstacles to some of these companies setting up and actually doing business here.

It seems to me that what we've trying to do here is enhance our opportunity in Ontario to be part of the action that's happening out there that's actually quite exciting and has tremendous potential. Mr Beaubien mentioned some folks in his area; I look at the folks in my area trying to get into this. It's not that they don't want to, it's not that in some instances they don't have some of the hardware or the software or the knowledge; it's that they need education, they need to be encouraged, they need to be brought into the discussion about how you get involved and I think more than anything they need to see that we're winning, as opposed to losing.

1650

Take a little town like Wawa, for example, which has lost its major industry. Now a lot of the small businesses that used to do business there are finding that with the major industry going and the lack of employment that has created, some folks are beginning to discover that they can buy stuff cheaper via the Net. They're not buying it from the local store and the local store is at a point where it may go under, which could in the end kill the community. What we're trying to do is set up opportunity for some of the smaller indigenous companies in that area to begin to sell via the Net. They haven't been able to make that quantum leap yet. That's what we're about here, I would think to some degree, in terms of this legislation that would allow for contracts to be signed from a place as far away as Wawa, with people in the larger market areas.

Then there is also the experience that people have. It says here, "Consumer complaints about e-commerce have risen by about 1,000%." This is from the Ministry of Consumer and Commercial Relations. That's why they're doing the study that they're doing. There was also a StatsCan benchmark study released that says, "E-commerce has been a complete bust for the Canadian economy so far."

Putting all that together, is there more that we could and should be doing at this particular point in time: first of all making it legal for people to do this kind of

business via the Net, considering some of these stats and the reality that's flowing out there?

Mr Challinor: I haven't seen the research work that you're quoting but I can only think that e-commerce is a relatively new phenomenon to the Ministry of Consumer and Commercial Relations. I have to assume that the number of complaints is up considerably because it's a new thing. Maybe in a couple of years we can revisit that, you and I, and see just how many complaints there are relative to other ways of doing business with consumers.

E-commerce has not been a bust in Ontario or in Canada. I can't tell you right now the number of new companies that have been created or frankly the number of existing businesses that have been saved because they have adopted e-commerce as a way of doing business with consumers.

As with traditional businesses, Tony, some will come and some will go. We will lose some dot-coms and we will gain new ones. We are losing existing businesses—sadly, the announcement about Knob Hill Farms last week—but there are others that will come along. Grocery Gateway, for example, is a totally e-commerce-driven grocery business based in Toronto and it's doing very well. All of its customers purchase their products and services off the Web.

In terms of Ontario or Canada being competitive to start an e-commerce business or a dot-com business, the tax situation, certainly the personal income tax situation, could be better; there's no question about it. But I don't think it's a show-stopper. I think the show-stopper for new businesses that wish to go public is capitalization. The market in Canada does not value a dot-com company the same way the US economy does. It is more advantageous for entrepreneurs who wish to start that kind of business to capitalize on the New York Stock Exchange as opposed to the Toronto Stock Exchange.

But there are other advantages to remaining in Canada as well and one of them is our people. We have about the best-trained workforce in the world when it comes to IT. We certainly have a shortage of skilled people, but it's a relative thing. I think we have an excellent college and university system across this country that is turning out top-notch people every day. Compaq continues to invest in Canada, as do our competitors. It's unfortunate that you heard that, but there are others who are doing very well in this country.

I'm glad that you're encouraging businesses in your riding to do e-commerce. It will not be the saviour for them; it will be yet another way to provide their products and services conveniently.

People who typically buy off the Internet today are not looking to save money; they're looking for convenience. You're not likely going to save an awful lot of money at the end of the day but you are going to get the product that you want. And that's the advantage.

Mr Martin: I don't doubt that for a second and I think that we absolutely have to be part of that. It's just a question in my mind of how you do it properly. What do you do first and what do you do second? We've had

people come before us today to say that we're looking at the issues of cybercrime and e-commerce and the social and economic impact of the digital revolution, some of the privacy issues and those kinds of things. The industry is actually way ahead of us in that they're dealing with that already. I suggest here that that's probably one of the big reasons that a whole lot more people aren't jumping on and getting involved, that there is that concern, that very real concern. I'm just beginning to dabble myself a bit in this whole area. I certainly use it for my work, but in terms of my own private, personal business, every time I get on it and I do something, I think, is this going to be OK? As soon as it takes off, is some of my information going to go to somebody that it shouldn't? Is all this going to be fine in the end? I worry and I'm sure that others do too.

We're told to go ahead and quickly approve this bill and that following suit thereafter will be consultation re the whole question of confidentiality and privacy and some of the other things that people are concerned about. What if we give the go-ahead, the green light to doing business legally, signing documents on the Internet, and we find, in short order then, where now we have—it says here consumer complaints about e-commerce have risen by about 1,000%. All of a sudden, the lid blows right off it completely.

The Chair: You've probably got about 30 seconds to answer that. We're a little over time.

Mr Challinor: Just very quickly, this legislation is not going to assist in that regard. It's the privacy legislation that comes afterward, both from a federal level and a provincial level. As long as you've got people conducting business in the public domain, whether it's e-commerce or traditional means, you're always going to have issues of fraud. I think the 1,000% increase really is more a reflection of the growth of e-commerce generally as opposed to the growth of fraud in e-commerce. All I can say is let us both, in government and in the private sector, work together and develop faith with the public that this is the next wave, the new way of conducting both personal and professional business.

The Chair: Thank you very much, Mr Challinor, for coming in this afternoon.

McCARTHY TÉTRAULT

The Chair: The final speaker for today is Mr George Takach, cousin of Gabor, and he's with McCarthy Tétrault. I should tell you, Mr Takach, that your cousin wishes to express a hello to you.

Mr George Takach: We didn't compare notes so I'm curious if you think that we have a feud in the family or something about one or other section of the proposed bill.

The Chair: I would imagine you too are a member of the Canadian Bar Association.

Mr George Takach: Yes. Thanks for having me. I'm delighted to come and share some thoughts about what I think is very important legislation. I'm here as a, quote, "expert," I believe, though also somewhat in a personal

capacity. I practise law at McCarthy Tétrault, and we have in that firm 31 lawyers doing technology and e-commerce-related work. So we're dealing in the trenches day to day with clients who are moving into the Internet world, they're doing e-commerce, and I can tell you that literally daily questions arise that this Bill 88 will help with.

1700

In terms of credentials, I teach a course up at Osgoode Hall Law School, and have for about 10 years, in computer law. So it has been a fascinating scene to watch the Internet come on relatively recently, six or seven years ago, as a commercial vehicle and to watch the law reform movement adjust to it and address it.

I've also written a little book—I brought a copy with me, not that I hope to quote from it—but even though it's only two or three years old it speaks to precisely this kind of legislation. We were all hoping it would come sooner, but better late than never.

As a general statement, I'm extremely supportive of Bill 88, both personally—it'll make me go home earlier at night and be with my family because the kinds of questions that are keeping us up late at night the bill will help resolve—but also professionally in terms of the clients I work with.

If we really believe that we want to make Ontario right up there with the leading jurisdictions in the world in terms of being amenable to e-commerce and being attractive for doing e-commerce, if we want to be able to say with a straight face to our dot-com start-up companies and our more traditional companies that are moving on to the Web that Ontario is a good place to do e-commerce business, then we simply need this kind of legislation, because we're falling behind internationally and it's embarrassing.

I deal almost on a daily basis with our counterparts in the United States, and as they come to do business up here one of their questions is, "What's your legislative regime?" Currently we can't point to one, and this will set us quite a way along to making us one of that select leading group of industrial countries that gets it.

Having said all that, of course, as a good lawyer I've got to have a few additional wrinkles and nuances to suggest to the committee. I've asked dispensation from my good friend John Gregory, who of course is a prime directive behind this legislation. Just as a quick aside, I think John has done a superb job of law reform here. The process—I don't know if anybody has talked about this, but as a quasi-academic, the listserv over the Internet that John uses to elicit commentary and input and so on is a fascinating example of just how democratizing a force the Internet can be and how inclusive it can be and so on. I think much of the work, even pre-dating Bill 88 to the Uniform Electronic Commerce Act, again that John was part and parcel of, the UNCITRAL law that came before that—it's a fascinating case study. If at some point members of the committee wanted to stand back and look at law reform generally, it's a very interesting example of how the Internet can be used for this sort of thing.

Having said that, let me turn to just a couple of suggestions. To put it in context, if the committee said, "We're in a real hurry and we're going to pass this next week because there's a little window in the legislative agenda," then I'd tell you to scrap everything I'm about to suggest and get this bill through as it is. But if you have an extra week or two, then I'd offer up some of these suggestions. But seriously, if my remarks or anybody else's delay this past the fall session, then I'd humbly encourage this group to kind of ignore, at least for the moment, all of these considerations, comments and suggestions for improvement and put those into phase 2. Actually, I'm going to end on a note about law reform and how this committee should view Bill 88 as really not the end point. Because the Internet is moving so rapidly, because of the kinds of issues I heard you talking about as I came in, I'd encourage this committee to revisit Bill 88 almost annually to see how it's working, how it's addressing new technological challenges and so on. We shouldn't get caught up, hopefully, that this is the only shot we'll get at it for the next decade, because that's not good law reform in the Internet space.

Some humble suggestions: section 10—and I don't know how granular you want to get, but let me get pretty specific with you—has a concept, and I think it's an important one. Again, as we move into an electronic environment, we want to functionally recreate what it's like to do business with paper. One of the principles in the statute will be that, to the extent that you have to provide information to someone in an electronic form, as long as it's accessible to them and with a few other requirements, then you've functionally recreated what you would have, had you delivered paper.

Section 10 is a gloss on that principle and says essentially that merely making it available through access is insufficient, for example, on a Web site. The concern here is that if you have to give notice or if there's a statutory requirement that certain information be delivered and so on, simply posting it on a Web site with nothing more shouldn't suffice, and I'm comfortable with that. But one business, frankly, that we're starting to see growing up in Ontario and elsewhere in the Internet world is the concept of an "infomediary," somebody who makes it their business to take all sorts of information and then make it accessible to people in a very simple, straightforward way. One of the problems we're finding on the Internet is information overload, there's just too much, and so a whole group of parties is going to come into the Internet world. One currently is called an aggregator. If you do Internet banking and such, it's not beyond the realm of the foreseeable that you would have 10 or 12 different bank accounts, other accounts and so on and then you bookmark each of those, and it becomes actually a fairly complex exercise just to keep track of all that.

For instance, one of my clients is an aggregator. What they do is, they give you a single dashboard behind which they then link to the Bank of Nova Scotia, your investment adviser and so on and so forth. Really, that

intermediary takes care of providing you with information, making sure you get your annual meeting notices and so on. One concept that I think would be very useful—but again if it doesn't make it into this go-round, maybe it's next year's go-round, and I'll just raise it in a generic fashion here—is this concept that you can appoint an agent to take delivery electronically of certain things for you and that may not have to be direct.

Another concept that we're seeing, for instance, in the securities disclosure area is that the Internet could be actually a very great way of providing all sorts of financial disclosure in a fair and effective way. Rather than sending you huge files that will then clog up your computer and cause it to crash, what a lot of companies are doing is saying, "Look, the information's on our Web site, so we'll post it to our Web site." But as long as they tell you in an e-mail, "The quarterly report is now available for viewing" and as long as technically it's crystal clear that you can view it, that should be enough to meet the provision test. A little bit of loosening in section 10 or a little bit of clarification that these intermediaries and agents can satisfy the point behind this kind of legislation could be very useful, so that, again, the legislation is keeping up to this rapidly changing business model.

1710

A couple of other points—I'm happy to take questions, if there are any, as we go along. One provision—just to jump around, because I think these are in order of importance in my own mind—if you turn to 20 and 21, particularly 21, this is a section that is a little bit unusual in that, for instance, I don't believe you will find it in the recent US legislation that just got passed. John may correct me on this, but the last time I looked it wasn't in there. It essentially allows someone who's ordering, let's say, something from Indigo or Chapters, if they make a mistake and they push twice on the number 1 and order 11 books instead of one, to correct that mistake or to get out of the deal if in fact they made it inadvertently.

These things do happen on the Internet. There's a story of a French bond trader in Paris a couple of years ago who came in in the morning, was having his coffee and was sort of leaning on the sell button on his trading machine terminal, until a colleague came by and said: "What are you doing? You're selling our position and losing money." "Oh, I didn't notice; my elbow." So these things can happen.

The concern I have with 21, though, is that it does present the prospect for abuse. So I order 100 widgets and I think about it the next day and the market has gone against me, or I'm buying some shares and the market goes the wrong way and then I think, "Oh, gee, I guess I want to get out of that." If we keep some additional onus on the user—for instance, just to be very specific, in 21(c) it talks about "on becoming aware of the error." For certain types of relationships on the Net, it might almost be time-sensitive, just as in some of our consumer protection legislation there's a cooling-off period of time now. The retort to that is, "But, George, you have to become aware of the error first."

The concern I have is that this will force Indigo and Chapters and everybody else to always have a confirmation mechanism on the site. That may not be a bad thing: "Are you sure you wanted to buy 11 books and not just one?" and so on. I'm particularly concerned that because it doesn't appear in the US statute, there will be this asymmetry on the two sides of the border and certain Canadian sites, for instance, that don't need to build that functionality into their site for US orders will find that they're now having to meet a higher standard. Again, it's not a big point, but we are standing out. On the other hand, if we do want to send a consumer protection message, then perhaps this is a useful message to send.

The alternative is to not put it in, monitor the situation and see just how many problems do arise, and then put it in if we have to. By the same token, if you leave it in, let's monitor it to make sure there isn't abuse surrounding it and people trying to get out of agreements just because they're using this as a pretext. That's one to keep an eye on.

I mentioned the US statute. Frankly, in an ideal world, because the Internet is so global, it really behooves us to be as harmonized as we possibly can with our major trading partners. As we all know—I don't know what the figure is—80% or 90% of Ontario exports go to the States. I'm as much a Canadian nationalist as the next person and I don't think we should kowtow to Washington just because they've done a thing a certain way, but to the extent we can sync up our rules, there really is some benefit in that.

Another rule in ours that's a little bit out of step is in section 3, the consent provision. If you look at the American statute, they have something similar but only for consumer sales, and yet we require this across the board. Again, the concern I would have is that for business-to-business interactivity over the Net, I would have thought that you don't really need a consent provision like this. The whole point of the statute is simply to say that information from a legal perspective is now media-neutral, and if companies are doing business over the Net they should have certainty that their agreements formed over the Internet are enforceable; so again a consideration to tone this down just to consumer situations, because you can rest assured that when Americans study this statute closely they will be comparing it for ease of doing business on both sides of the border. That will be another one that they're going to be looking at.

Two or three other quick points and then I think I'm done. Toward the back of the bill, section 29 is on biometrics. For those of you who may not be aware, I actually think biometrics hold a very important role in the Internet.

One of the problems we have in the Internet is anonymity. From the perspective of doing business, that's actually not a good thing. We really do want to know that you're Harry and I'm George and we're going to do business together. One of the ways that one can promote authentication over the Internet is through these so-called biometric devices. We've all seen the finger-

print scanner or the retina scanner in the James Bond film and so on, but these aren't just James Bond. These devices are happening and they're turning into relatively widespread use. Over the next four or five years you'll see them everywhere. In fact, there's a next-generation fingerprint scanner that doesn't just track the little ridges on your finger but tracks whether your finger is warm or not, to make sure nobody has severed it and is using it in a counterfeit kind of way. That's how sophisticated these devices are becoming.

This section 29 in the bill wasn't in the model law. I don't know exactly where it came from. My guess is that it might have been the federal privacy commissioner or somebody worried about the privacy dimensions of biometric devices, because there are some interesting issues there. When this committee looks at privacy initiatives legislatively, that will be a very interesting area to keep an eye on.

1720

But I really wonder whether you need to have anything in this statute about biometric devices. What I take away from section 29 is that biometric devices aren't as welcome as they might otherwise be and that strictly speaking you have to have express consent to use such a device as opposed to the inferred consent that generally operates for the statute. We will in fact have all sorts of these devices being used right at workstation level or PC level to tell who is who over the Internet. Again, if I had my druthers I'd probably scrap section 29 and leave this for a privacy statute down the road.

My final suggestion is on section 31, documents to which the act does not apply. Essentially it goes to the scope of the statute. Where is it operative and where are we saying, "No, there are a couple of documents that are so intrinsically part and parcel of a unique original—a will or a power of attorney—that we don't really want to get into the electronic version of those sorts of documents?"

I've got a couple of suggestions here. First of all, I think it's very good that the draftspeople for this statute took this list, which in the model law was right up front and set a pretty negative tone to the whole thing, and stuck it in the back. That helps. But I'd go even further. I would take this list out of the statute and put it into regulation, because I'd bet anybody around this table dollars to doughnuts that not just my generation but my parents' generation in a few years time will likely be completing their wills over the Net, that you likely will be doing powers of attorney over the Net and that law firms, for instance, will interface with clients for doing up a will electronically. You call up the screen, you enter key questions and details and then a will gets generated. Again, as long as that's done sensibly and carefully—and the regulations might stipulate some additional rules for those sorts of documents.

Again, I have every expectation in the next three or four years that a business of these infomediaries will emerge. I don't know about you, but I have a dickens of a time filing all my personal documents, my birth

certificate and this and that and the other thing. Just to give you an example, what my brother does—he's a bit of a techy. He's bought a scanner for about \$60. Life insurance policies, the Visa agreement you sign with the bank—all that stuff—he just scans. It goes into a hard drive on his computer; he also keeps a very important backup of it. If you really think through accessibility and understandability and consumer protection from the perspective of making things available and accessible to people, if you could actually see your insurance policy and your other key documents on a Web site that you would never lose and that's always kept up to date and so on—how many people lose their wills and so on? Yes, you keep it in a safety deposit box, but there are all sorts of people who don't. They get lost, and which one is the most recent? You will see services coming out over the next couple of years where all that will be aggregated and organized in an Internet environment. I just wouldn't want this list of exceptions to preclude our going there. Putting it into the regs and having a more flexible system, I think, would help.

Let me end on a note I mentioned right at the outset, that frankly whatever the committee does with Bill 88 in terms of revisions and fine-tuning, this is one statute that I'd encourage all of you to view not as, "Well, there it is. We've got the Electronic Commerce Act, 2000. I guess we can forget about that area of the law for the next five or 10 years, and let's move on to other things."

In my little book there's actually a request from legislators that because the Internet moves so rapidly, because the technology races ahead, because the law traditionally is conservative and reactive—small-c conservative, not big-C—it really behooves both the people in the House of Commons for their jurisdictional areas federally, as well as each provincial Legislature, to stay on top of this and, I think, to annually review and fine-tune. I don't think it will be an embarrassment three years from now, when we look back at this statute, that we'll find parts of it pretty quaint.

Again, I think the A-G's office has done a very good job of making it technology-neutral, keeping it simple. I think their phrase is that it's minimalist, less is more. But having said all that, there will simply be new challenges and new technologies to address. What happens in a number of areas, for instance in the copyright area federally, is that we're not used to doing more changes incrementally. So what happens with the copyright statute, because we know we're only going to get a shot at it once every 10 years, is that everybody kind of gangs up and gets polarized and kind of brings out the heavy artillery and raises the stakes. Then we have a really angst-ridden statutory amendment session, and everybody so exhausted that nobody wants to look at it for another 10 years.

What I'd encourage you to do here is to deal with it on a much more regularized basis—annually is not too soon—to have the Attorney General's office keep a running tab of new issues so that when you fine-tune this next year, that's not an embarrassment. It doesn't mean

we didn't get it right in the fall of 2000. It just means we're being very amenable and responsive to new developments. Really, the only constant in this Internet space is that there is continual change.

The Chair: Thank you very much, Mr Takach. You have taken your full half hour, so unfortunately there is no time for questions. We appreciate your submission. Thank you for coming.

Mr George Takach: My pleasure.

The Chair: Members of committee, before we adjourn to go to Waterloo tomorrow, I did indicate to each of you that we need to discuss options for Wednesday, in that we have received a cancellation. I think there is some consensus among committee members that perhaps we deal with the two other delegations we have from Ottawa either through some form of conference call or electronic means, although it may be a little premature to do it by electronic means, or by inviting them to Waterloo tomorrow.

I'm looking to the committee for direction. Is there consensus that we perhaps cancel Ottawa on Wednesday and try to accommodate the two outstanding witnesses in another form, either by inviting them to Waterloo, a conference call in Waterloo, coming back here on Wednesday and either having a conference call or paying for their trip to Toronto?

What is the preference of committee?

Mr O'Toole: With your permission, Madam Chair, I suggest that we put those three choices to the persons who made a request to appear. In no event should 13 people be travelling to see two people. Whether it's Waterloo—maybe that may be inconvenient for them tomorrow on such short notice—we could easily have a conference call set up at their convenience. I could be in my constituency office. I participated in many conference calls from my home. I think that's an excellent suggestion.

1730

The Chair: We do have the technological means by which to have a conference call in Waterloo, for example. I believe the last delegate is speaking at about a quarter to 2, so we could tack on another hour to Waterloo to accommodate the two. Unfortunately, until I have direction from committee, I can't offer those suggestions.

Mr O'Toole: I move that we bring to them three choices.

Mr Martiniuk: There's a fourth choice, Madam Chair, if I may, and this would be their choice: that a written submission from them, if they deem it adequate, could be given to us. In lieu of that, I would move that the Chairman be authorized to set up a conference call.

The Chair: The only problem with a written submission is that it wouldn't be read into the record unless there's a specific request to do so and unless there's general agreement on behalf of committee that a member of committee could read it into the record if requested by the delegate.

Mr Martiniuk: A very good point. I would certainly agree to that, that it be part of the record and they be told that.

Mr Gilchrist: I think practically that's not an impediment. We've done that in the past, where it has simply been deemed to have been read into the record. It's certainly within the purview of the committee to pass such a resolution. If you're going to offer them these choices there should at least be a ranking. It seems to me, based on past practices, the first choice would be to invite them to simply send a written description of their concerns or their suggestions and offer them the guarantee that that would be circulated to all members and carry exactly the same weight as an oral submission. Secondly, if you're ranking them and you've already taken the time to go to Waterloo and you're set up with Hansard and sundry amenities, the conference call might be the next most appropriate choice. The third option, if in fact you wanted to invite them down to Toronto, should be your last resort. There's still an expense, and more than that, there's an inconvenience to those people. A conference call allows them the same opportunity. If I might offer a suggestion, to offset any inconvenience that's caused to them, you might offer them a slightly longer time for the question-and-answer period or to make their views known. Given the relative paucity of submissions tomorrow, perhaps you have that option—not going silly, but maybe give them 40 or 45 minutes. I would think that if you're looking for a motion, you should at least put a ranking to the choices you're going to give them. It protects the Chair as well, makes sure that she's seen to be doing the right thing.

Mr Kwinter: Is this facility you're talking about a teleconferencing call or just voice conferencing?

The Chair: It would just be a voice conference. We don't have the means by which to establish a teleconference.

Mr Gilchrist: Not in Waterloo. It would be back here in Toronto.

Mr O'Toole: We've teleconferenced right from this room.

Interjection.

Mr O'Toole: Yes, we have. I've been involved in it. Right from this room we had teleconferencing.

Mr Kwinter: That begs the question. If you really have teleconferencing you never have to go anywhere. You just have them stay there, you stay here, and do it all the time.

Mr Gilchrist: We'll take that as a friendly amendment.

Mr Kwinter: One of the things you have to do is contact them and tell them the situation, and in your mind know what your options are and see how amenable they are. They may, for whatever reason, feel that they did everything they were supposed to do. It was publicized that they were going to have the ability to address this committee and it's not their fault that these people have cancelled and there isn't enough interest or availability. I

would certainly support a motion that gives the Chair the ability to negotiate the best deal possible.

The Chair: Are you in agreement with that, Mr Martin?

Mr Martin: I am. I'm just looking at the little brochure that we were given re the University of Waterloo Conference Centre. It seems to me that you should be able to facilitate a full-blown teleconference.

Mr Kwinter: The big problem is not at our end; it's at their end.

Mr Martin: Anyway, I'm OK with what's been suggested.

The Chair: If it comes to that, let's see what we can arrange. If you'll leave that with me, members of the committee, you know I will do the best I possibly can to accommodate the two witnesses. Thank you for your patience.

This meeting is adjourned until tomorrow; I'll see you at 12 in Waterloo.

The committee adjourned at 1736.

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Mardi 29 août 2000

Standing committee on justice and social policy

Electronic Commerce Act, 2000

Comité permanent de la justice et des affaires sociales

Loi de 2000 sur le
commerce électronique



Chair: Marilyn Mushinski
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Tuesday 29 August 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Mardi 29 août 2000

The committee met at 1201 in the Ron Eydt Village Conference Centre, University of Waterloo, Waterloo.

ELECTRONIC COMMERCE ACT, 2000

LOI DE 2000 SUR LE
COMMERCE ÉLECTRONIQUE

Consideration of Bill 88, An Act to promote the use of information technology in commercial and other transactions by resolving legal uncertainties and removing statutory barriers that affect electronic communication /
Projet de loi 88, Loi visant à promouvoir l'utilisation des technologies de l'information dans les opérations commerciales et autres en éliminant les incertitudes juridiques et les obstacles législatifs qui ont une incidence sur les communications électroniques.

The Chair (Ms Marilyn Mushinski): I will call the meeting to order. Good afternoon, ladies and gentlemen. This is a meeting of the standing committee on justice and social policy to consider Bill 88, An Act to promote the use of information technology in commercial and other transactions by resolving legal uncertainties and removing statutory barriers that affect electronic communication.

Before we hear from the first delegate this afternoon, I should bring you up to date on our inquiries with respect to the two outstanding delegations in Ottawa. I was instructed by committee to cancel that meeting because we only had two. We have been in touch with those two delegates. The first one is Mr Michael Geist, who has chosen to withdraw completely. My understanding is that he is an expert witness and he would be happy to entertain any questions that any committee members may have. So we'll certainly give you his telephone number after the meeting if you wish it.

The other delegate was the Public Interest Advocacy Centre. They will be submitting a written submission by the end of the week and, again, will be happy to entertain any questions that any members may have of them.

COMMUNITech ASSOCIATION

The Chair: We'll hear from the first representative this morning, who is Sangeeta Sindwani of Communitech Association.

Mr Mario Sergio (York West): Madam Chair, have we provided for an overview before, or are we going directly into—

The Chair: My understanding is that it was a request by one of the presenters and will be used a little later.

Mr Sergio: Oh, OK.

The Chair: Good afternoon, Ms Sindwani. You have half an hour and if you complete early then we may be able to have some questions from members of committee.

Ms Sangeeta Sindwani: I'm pleased to have been invited to speak to this standing committee concerning Bill 88, Ontario's Electronic Commerce Act.

The Chair: Excuse me. This is kind of noisy, so if there's any opportunity to—and I realize it may have to be on during the presentation, but it's difficult to hear. Please carry on.

Ms Sindwani: I'm especially pleased that this standing committee has come to Canada's technology triangle to solicit various views on this bill. I've been asked by Greg Barratt, the president of the Communitech Technology Association, to speak to the topic of Bill 88 and to express Communitech's support for this bill.

By way of background, the Communitech Technology Association is an organization dedicated to building critical mass for the technology industry real enterprise in the Kitchener-Waterloo region. It has as its members technology companies, educational institutions and various levels of government, all working together toward the continued development of the technology industry in this area, both as providers and users of technology.

In terms of my history, my involvement in the area of electronic commerce has been as a lawyer in private practice, advising clients on issues related to information technology law, which I think is an area that's quite broad and covers the realm of electronic commerce.

In 1998, I joined the electronic commerce working group of the Uniform Law Conference of Canada, a group that was responsible for the development of uniform law in the area of electronic commerce. The group developed, as I'm sure you're all aware, the Uniform Electronic Commerce Act which is actually very similar to the bill we're here to discuss today. At present, I am an associate with the law firm of Gowling Lafleur Henderson.

At the outset, I should state that Communitech has not had any specific consultations with any of its members

concerning this bill. However, generally it has had general consultations in the past with its members and has been able to get a good feel for what is happening within the Kitchener-Waterloo community. It was therefore felt that it would be better to express an opinion or a general view on Bill 88 as opposed to remaining silent on such an important initiative.

The support that is being expressed here today on behalf of Communitech is support for what we see as the intention behind Bill 88, that being the removal of a few roadblocks toward the full adoption of electronic commerce. In other words, we support law that removes legal barriers to electronic commerce by validating electronic documents and by increasing confidence and predictability in the result of transacting on-line without dictating the type of technology that is to be used to do this.

The concept of increasing confidence in the legal effect of on-line transactions is an important one and we feel that this bill is a step toward this goal because it really removes the legal ambiguity as to whether something that was traditionally done using paper can now be accomplished electronically.

As a participant in the Canadian E-Business Opportunities Roundtable, Communitech has had the opportunity to accumulate various data on electronic commerce. The roundtable consists of a group of industry leaders, including John Wetmore of IBM Canada and John Roth of Nortel Networks, who have with the other participants presented a report to Industry Canada on accelerating Canada's leadership in the Internet economy. Part of the data that has been accumulated for this report is the Statistics Canada survey on the use of information and communication technologies in electronic commerce. The results of the survey show that Canada is second only to the United States in world rankings of overall connectedness to the Internet. The government of Canada has publicly stated that its goal is to be the most connected country in the world, and with the statistics I've just mentioned it appears that we are fast approaching that goal.

Communitech's vision is similar in that the Kitchener-Waterloo region is a hotbed for technology companies and would only benefit from increased connectivity to the Internet. Establishing law that validates electronic documents will likely reduce public apprehension to performing transactions on-line and will assist in bestowing greater confidence in this revolutionary way of conducting business. It's anticipated that this will further our efforts toward the goal of greater connectivity, both on a local and global scale.

Despite high connectivity rates here in Canada, there still appears to be a slow adoption of electronic commerce in both the business-to-consumer and business-to-business markets. Statistics show that only 10% of private sector firms use the Internet to sell goods and less than 14% of private sector firms use the Internet for purchasing. These numbers are somewhat disappointing given that our population is highly connected, as well as

the fact that there's been key infrastructure in place for communicating electronically. These statistics reflect our own local experience here in this region.

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At present, therefore, it appears that the majority of the private sector just doesn't feel comfortable enough with the Internet to use it as a medium for conducting business. By providing a legal framework to validate electronic documents, this initiative may accelerate the adoption of electronic commerce by the private sector.

The minimalist approach taken by this bill is viewed favourably by Communitech. Many of the technology companies that exist in this region are on the cutting edge in terms of products and services they offer. They may not want to see legislation that prescribes specific technology to be used in the validation of electronic documents. Such legislation could stifle the development of new technology. Bill 88 does not prescribe specific technology, which is really in keeping with the concept of continuous development and improvement in technology.

Based on my own background and knowledge in this area, I am familiar with certain legal initiatives that have been taking place in Canada and around the world. Internationally, there is a recognition that consensus is required among countries developing laws in this area. The goal is really not to have identical laws, but to have the same philosophies and principles operating behind these laws.

The Uniform Law Conference of Canada is a body within our own country with a mandate to harmonize laws throughout Canada. This organization viewed electronic commerce as an area requiring consistency among the provinces, and therefore has adopted a uniform law on electronic commerce. At the federal level, as we are all aware, Bill C-6, the Personal Information Protection and Electronic Documents Act, has now been passed and is similar to the uniform law. Bill 88 is also similar to the uniform law and, from a policy perspective, is what many other countries are doing in an attempt to remove legal barriers to electronic commerce.

That really concludes our support statement before the standing committee. As a representative of Communitech, I've been asked to raise a few points for consideration by the committee. I don't know if it's appropriate at this moment that I go ahead and do that.

The Chair: That's quite appropriate.

Ms Sindwani: First, it has been expressed by the Ministry of the Attorney General in their fact sheet to the Electronic Commerce Act that the bill does not permit people to collect biometric information, such as dynamic signature information. Can somebody from the panel clarify the meaning of "dynamic signature"?

The Chair: What you should do is relay all of your outstanding concerns to committee, and then perhaps we can have a member of committee respond to them.

Ms Sindwani: That would be the first question. I guess where Communitech is coming from is just to ensure that the use of digital signatures is not being

prohibited. The president of Communitel as well as myself were not able to answer that question, and that's why I raise it.

Second, in the same fact sheet it is stated by way of exclusion that the act "does not override existing provincial laws and regulations that permit, regulate or prohibit the use of electronic documents." Communitel would like to know what the reasoning is behind allowing other laws to override this bill. Practically speaking, by using this exclusion are we moving forward or are we at the same point we have been without any legislation in place?

Those are the comments that the president has asked to relay.

The Chair: That's it?

Ms Sindwani: That's it.

The Chair: We have about 15 minutes, so each person can have maybe five minutes for questions. Mr Martin.

Mr Tony Martin (Sault Ste Marie): Could I suggest, in the interests of answering those two questions, because I certainly would be interested in the answer, that either the gentleman who presented yesterday or our research person might just take a couple of minutes and give it a shot?

The Chair: Mr Gregory, would you like to just very briefly respond?

Mr John Gregory: Thank you, Madam Chair. There were two questions. The first was, what is meant by dynamic signature?

The Chair: Or biometric information.

Mr Gregory: I'm trying to remember just what the—

Ms Sindwani: Would you like the fact sheet?

Mr Gregory: No, I know what the fact sheet says. Anyway, the short answer is that this is not intended to prevent digital signatures. As the Teranet representative explained to the committee yesterday, digital signatures are a use of encryption technology and mathematical algorithms in order to transform a digital version of the message. It has nothing to do with biometrics, which of course deals with the measurement of personal characteristics.

In defining "biometric information," section 29 of Bill 88 says it's "information derived from an individual's unique personal characteristics, other than a representation of his or her photograph or signature." So that is a representation of a photograph or signature. If someone uses a digital photograph as your identifier, that is not biometric. It may be biometric technically, by the dictionary definition, but we are not trying to get at that in the provision of the biometric thing. It doesn't apply to biometrics. If someone takes your picture or uses a digitized picture as an identifier, that doesn't fall into the provision of biometric information in the act.

Likewise, a dynamic signature is the kind of signature created when you sign a computer-sensitive pad. For example, a number of department stores have done that, where you don't sign with a pen but you sign with something that feels like a pen, a stylus. You sign on a

computerized pad and that records not only the shape of your signature—you sign what would normally be your signature if you were doing it with pen and ink—but it is a computer-sensitive pad and you get not only the picture but you get the pressure and the speed and the angles recorded. So you have much more information than you have with an ink-on-paper signature. That is recorded in a computer and that is associated with the document that you signed, so that can be reproduced. If someone were to say, "Show me the signed document," they can pull it up on a computer screen and there it is with your signature on it. But as I say, there is more information than simply what looks like your signature. That is fairly common.

That is excluded from the provision on biometrics. The reason for that is simply that it's very hard to do that accidentally. The point of the biometric provision, as we heard yesterday, was to say there has to be express consent to the use. It may well be possible to take biometric information from somebody without their really realizing how it's done. There are computer mouse devices which read your fingerprint as you use them. Someone might use one of those without really realizing that that was happening. Or if someone does a voice recognition pickup, that can happen without your really realizing that's what they're doing. It's very difficult to sign on a pad without realizing what they're doing. So it limits the application of the biometric provision by saying, "All right, if they use a picture, then they can use a picture." It's not particularly intrusive to use a picture. It's on my driver's licence. It's a fairly common kind of thing, and for a dynamic signature it's not a problem.

The other reason—and I'm not sure how technical you want to get—is something we talked about with the Information and Privacy Commissioner. One of the concerns with the use of biometrics that was expressed by the Information and Privacy Commissioner was that the data, the biometric information that the computer picks up, might be used to find you, might be able to identify you, identify a criminal, identify someone in a database to find out whether there's a fraud or whatever. They want to identify you not just to say, "Do I have the right to withdraw money," or whatever, but more broadly. With dynamic signature, you can't really use it for that purpose.

I won't impinge on Ms Sindwani's time, but the other question was, if this act yields to other provincial laws that prohibit electronic information, isn't that a threat to the purpose of the act, which is to harmonize and modernize? That's something we did discuss yesterday, both in my presentation and in some of the other presentations.

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The point is that there are several hundred provincial statutes that have not had provisions made for electronic documents and we don't want to amend them all. This saves us amending them all. Harmonizing what's been done is a very difficult diplomatic process among ministries. We may eventually do it, but we figured if we

had to do that first it would be years before we get the new—

The Chair: Thank you, Mr Gregory. Mr Sergio, do you have any questions?

Mr Sergio: A question and a comment, yes indeed. First of all, thanks for coming down and making a presentation to this committee. Other than what you expressed to us today, was there any other area that you or your company may have a concern about with the bill?

Ms Sindwani: No. I was asked to express those two concerns and I've done so. I've had consultations with the president of Communitech. Like I said, in the short time span that we were given there was really little time to consult the members of Communitech, so this is a general view that's being provided. What I've expressed here today is basically an expression of his thoughts on the bill.

Mr Sergio: Given the shortness of time, did you notice in the bill, for example, that there is no mention at all with respect to privacy or confidentiality issues?

Ms Sindwani: Yes.

Mr Sergio: Is that one of your concerns?

Ms Sindwani: No. Again, when I speak or give any type of opinion, I'm speaking personally; I'm not speaking on behalf of my employer. Because of the time span, there was no opportunity to take a view of what the other lawyers in my firm or the members of Communitech think. I think it's a separate issue that can be dealt with separately. I don't see that it would be necessary to include it in this type of bill.

Mr Sergio: If it were to be included in some other piece of legislation, do you think, at least in dealing with such an important issue as Bill 88, that we should have made mention of that to cover the possible effect that it may have in the future under a different piece of legislation—the issue of privacy and confidentiality?

Ms Sindwani: I think it is in some respect covered in this bill in that there's mention of it, which is better than no mention at all, in my opinion, and that's just the statement that there's preservation of other laws regarding privacy and access to information, and that would give way to those types of laws that actually protect privacy of individuals. Insofar as it goes that far, I think that would be good; any further, I don't know how, other than drafting a section that deals with privacy. I don't know, other than that, how to go about mentioning it better than it has been here. Again, that's my personal view.

Mr Martin: Certainly we picked up the message that you want this to move on so that it will give people out there the confidence they need. You also highlighted that in Ontario and Canada today the percentage of people actually doing business in this way is still minimal. I can tell you that from some of the material we've looked at it, the complaints about e-commerce by consumers have risen by about 1,000% over the last year or so, so there are still some big issues out there.

This is a very important initiative. I guess the question I would have for you is, in trying to establish this on a

foundation that's solid and will give people the confidence that they need, and actually reflecting the fact you're coming here today not having had much lead time to consult with your partners and all of that, wouldn't it make more sense to actually be doing a wider consultation on this in order to bring people into the discussion and, as such, then have them understand more fully the potential that's here but also some of the challenges that are in this that might, in the end, if we're not careful, even add more to the frustration and consternation and concern of people out there who actually try to do this?

Once this is passed, and it sounds like it's going to move rather quickly, then it's legal to do business in this way. If people aren't educated and prepared to actually participate in a constructive and positive way in that, they will have signed a whole lot of documents now that initially were sort of iffy and so you at least had some recourse if you made a mistake or you didn't think it out properly, but now it's done and you're stuck. That could be quite a surprise and create some real difficulties, it seems to me, in the industry. Any comment?

Ms Sindwani: I think certainly education is a key factor in something this important. I can speak as well just from my own client base that I would benefit from, or the Kitchener-Waterloo region specifically, as I speak to that, would benefit from knowing a little bit more about the act and the initiative, as opposed to remaining ignorant and then finding out later that this is law. I think what we're doing here today is a good step toward that because you bring members forward who can speak to it and then spread the word.

I'm not sure what the process was in terms of choosing areas in which this bill would be presented by members of the various communities. I don't know the thought process behind that. But certainly in terms of canvassing other cities and other jurisdictions within Ontario, I don't see an issue. But at the same time, I think I can also say that those within the technology industry would certainly welcome something on paper—more than something on paper—with the intention of validating electronic documents, but within a reasonable amount of time, because this is a fast-paced industry and obviously taking time to get consultations may slow down the process. It would certainly help in terms of educating, but at the same time, saying that electronic documents are valid within certain parameters is, in my view in terms of my clients, helpful in terms of moving forward. I don't know if I've specifically answered your question, but that's my answer to it.

Mr Martin: Thank you.

The Chair: Mr Wettlaufer, for about two minutes.

Mr Wayne Wettlaufer (Kitchener Centre): Ms Sindwani, thank you for your submission. You mentioned in your submission that, while Canada has the second-highest connectivity rate, second only to the United States, we still only have 10% of sales conducted by e-commerce, and 14% of purchases.

Ms Sindwani: That's right.

Mr Wettlaufer: That's a rather alarming figure. There is also a very low percentage of business-to-business transactions. I'm not sure what the figures are there offhand, but I know they are low.

You did mention lack of confidence as being one factor. Would there be any other factors that you can bring to mind for the attention of this committee, and do you believe this bill will assist in increasing the transactions and also increasing the business-to-business transactions?

Ms Sindwani: I'll answer your second question first. I think, yes, having this bill would increase predictability, as I've said, and confidence in terms of the results of transacting on-line, which I think Canadian society is a little apprehensive of to begin with, more so than the United States. Again, that's a personal view. Having something in place will instill this confidence, it's hoped, and help us move forward, and I think the bill does that.

In terms of the reasons that business-to-business e-commerce is slow, I have a Statistics Canada survey here in front of me—not the survey but actually a brief summation of some of the things that come out of it. It is stated that some of the reasons private sector firms do not use e-commerce are that they believe the goods and services do not lend themselves to electronic commerce, they prefer to maintain current business models, and there are concerns regarding security. Those are three of the other reasons that I've come across.

The Chair: Thank you very much, Ms Sindwani, for coming this afternoon. We appreciate your presentation.

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JOSHUA DOIG

The Chair: The next delegate is Joshua Doig. Good afternoon, Mr Doig. You have 15 minutes.

Mr Joshua Doig: I'm sorry I didn't have anything written down, but I have a statement I'd like to read off, background about myself.

My name is Joshua Doig. I work here at the university. I am just a recent graduate, in April. I have been very interested on a personal level in the technology sector in general—not, maybe, specifically e-commerce—because I've seen at least 12 of my graduating comrades leave the country for greener pastures down south. It seems to be limited very much to the technology sector. Also, there seem to be a lot of regulatory problems in Canada that inhibit their starting up their own businesses. E-commerce might not be directly applicable to all that because there are broad-based concerns there, but it is one portion of the problem. So I am very much in support of this bill to try to help facilitate technology and acquisition in the growth of the technology centre in Canada.

I did a number of studies in my last year—I was in economics—on why people are leaving, what the problem is and why in this particular sector. That got my own personal involvement in here. I think we should be very concerned about Canada's competitiveness in this region, our government support in this region, and why we're

losing. The growth all around the world is in the new technology, the new jobs, and our governments need to be supportive of this industry and help it grow. If we fall behind, we'll just continue to fall behind at an aggregate level that increases.

If you change e-commerce to make it easy and more legal at a rate where we can move forward with that, you not only have more companies feel better about doing it on-line; you help the consumer, because he knows that what he is signing is a legal document, and therefore the company should come through. Once you do that, you have more companies wanting to go on-line, if they feel secure about it. They would then hire more people. The people who need to service this kind of technology are very skilled. You would create more jobs, and hopefully some Canadian companies would get on board a bit quicker.

There was an article in the paper yesterday that said the second biggest barrier to doing an IPO with a high-technology firm in Canada was government regulation. I'm sure that tends to be more indicative of the actual progress of doing your IPO, but it's also reflective of problems we are having in Canada with government regulation. Instead of the government trying to support this stuff, they seem to be cautious and not sure what they want to do, so consequently nothing is getting done quickly. Our government needs to respond quickly to keep pace with this kind of thing. It is still written documents, and people need to know that it is legal all around. I think you clarify a lot of issues if we all know that what we are signing is legal.

Anything that would encourage adopting the technology sector quicker is better for our economy. Our young people, who continue to leave, need government support. They are on-line with this technology already. The government needs to catch up with them and help them out. That's where I'm coming at it from, not so much the legal but more the economic impact, especially with young people trying to get involved and company-to-company, and then fostering growth in this sector.

I think that's my statement, if you have any questions.

The Chair: Thank you, Mr Doig.

Mr Martin, you have about three and a half minutes.

Mr Martin: I agree that we need to be moving as aggressively as we can to make sure we actually, in some instances, get out in front as opposed to always playing catch-up. Certainly this whole area is one that is just flying ahead in many parts of the world.

However, I think you have to do it intelligently, and I think government has a role to play to make sure that people are protected and that we are supporting an industry that is sustainable and as inclusive as possible of all parts of your jurisdiction.

For example, I said a few minutes ago that, according to the Ministry of Consumer and Commercial Relations, complaints about e-commerce have risen by about 1,000% over the last year or so. And that's with a statistic of, as was said earlier—except I've got some slightly different statistics. Stats Canada released a benchmark

study on August 10 which said that goods and services ordered by Canadians on the Internet in 1999 represented only 0.2% or \$4.4 billion of total economic activity, about 20 cents out of every \$100. However, there are some sectors that are doing more business. The cultural industries have done 20% of business using the Internet; private educational services, 17%. But in the area of the province that I represent, northern Ontario, which still continues to be very much tied into forestry, logging and mining and resource-based activity, we're looking at probably 1%.

I guess what I'm wondering about in this rush to be in front and to be first and to take advantage of this is, are there not some things that we need to make sure that we're doing to, on one hand, include all parts of the province, the north in particular, and rural Ontario, and on the other hand, to make sure that we're not setting people up to be taken advantage of? Is that not a role the government should be playing? Or, if they're not going to play it, who's going to play it as this industry evolves as it looks like it's going to?

Mr Doig: An interesting couple of points: the complaints have risen 1,000%; I wonder what the facts are on how much the volume has risen in the same time period. That would be neat to cross-reference. But, at the same time, some sectors may never—forestry may never get on to the Internet, but that doesn't mean you should slow it down for the industries that are trying to get on. I think you be inclusive by designing a system that anybody can get on at any time. Some sectors may never, ever use this but some sectors definitely need to use it. I think that you're actually probably helping the consumer very much by making it a legal document because it's often the consumer that suffers because I enter into a contract with a business, I don't get the product that I was told I was going to get through this contract and my legal recourses are fuzzy right now because what obligations does the company have? I think if you want to protect the consumer, that's great.

As far as educating the public, the public should be aware of their legal obligations already. It's just like any other issue. I just graduated from university. I sign a contract to be a tenant very often; I move around. I might not be aware of every issue involved there; I tend to educate myself when I need to. But the information should be made available for me and it is my responsibility to check it out ahead of time. I think, as long as you're clear with everybody that this is a legal document, as long as everybody is made aware of that, that education should be self-responsible.

Mr Wettlaufer: Mr Doig, we have the University of Waterloo here, which is turning out graduates of extremely high quality, the highest in the world. We're very proud of that. We're proud of the graduates and we're proud of the university.

Companies like Mortice Kerns are leaders in the e-commerce area, but we are finding all the time that in spite of the graduates we're turning out, we do not have adequate numbers of top-notch, high-tech graduates to

work in the companies, to help these companies grow, whether it be Mortice Kerns or Research in Motion or Open Text or on and on. We find, and I'm sure you do too, that so many of what are called "techies" are moving to the United States. Now the federal government tells us that that is not the case, and certainly we have heard the opposition members from time to time say that is not the case. In the government budget that was presented in May of this year, we provided an incentive for the tech graduates to stay in Canada when we said that the stock options that they would receive from their companies would no longer be taxed upon receipt but rather when they were sold at some point down the road. Of course, the federal government has opposed us in that regard as well.

Do you agree that we are having many of our brightest graduates leaving to go to the United States for what they see as a brighter field because of taxes or because of something like this bill?

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Mr Doig: Without a doubt. I did a lot of research especially on the StatsCan information that was released about a year ago that claimed that we don't have a brain drain. How they did their figures was they took what we had coming in as kind of techie or medicine and they put it against what we had leaving, a kind of exodus, and they came up pretty close, that we're only losing a couple of hundred.

I found there are two really scary issues with that. One is that there was no measure of the quality of the people who were leaving versus the quality of the people we were getting. They just classified that they had a degree of some sort from somewhere and where we might have been losing people who already had started companies and were running things. Second of all, the scariest thing is that we as Canadians tend to think, "Oh, Jeez, we're only losing 100. We might be losing 1,000 but we're gaining 900; not to worry." What you are losing is a huge potential. It should be looked at as, "Wow, we could have kept 1,000 and got an extra 900," so we could have been plus 1,900. This industry, as you said, is growing so rapidly, an extra 1,900 would just be a nickel or a dime in the pocket.

So the way StatsCan and the federal government currently do it is that they don't seem to be recognizing that we're still losing potential. I mean, we could have had 1,900. "Well, good. We're close to even. Excellent." It seemed ridiculous to me, with the reports they had out, and we're definitely losing. Not only that, if you lose a couple of key people—if you look at companies like RIM, they were only started by two or three individuals.

A friend of mine who wanted to start a company here couldn't get venture capital. He made sound equipment that's called Quinaware for your computer. You could download it; it's like a CD player. He couldn't find venture capital. He hired one person here in Kitchener-Waterloo, he got a venture capital offer from San Francisco, he left, and now the company he works for—he has a little division of it now—employs about 15. You

lost one, but the problem is that you really lost 15 people, all the tax revenue they would have been able to pay in the community, the houses they bought, the cars they bought, the CD players they bought and everything else they would have bought, not to mention the skills they would have garnered through this company that would enable them to start their own company one day.

I think we're definitely suffering a huge amount of brain drain. Not only that, it tends to be the best and brightest who get picked off. I'm still here in Canada. I did not take a technology degree and an American company doesn't want me. I had some very bright, very aggressive friends, much more entrepreneurial than I am, and they're gone. They're the kinds of guys you probably needed to have around to have a strong economy and the education sector and every other thing that the economy can derive money from.

Mr Wettlaufer: You sound pretty brave to me.

Mr Doig: I should have gone into technology.

The Chair: Mr Sergio, you have about two and a half minutes.

Mr Sergio: Joshua, thanks for coming down. That is a separate issue for another time.

What we are dealing with today, Bill 88, is to promote the use of information technology in commercial and other transactions by resolving legal uncertainties and removing—I'm reading the heading of the bill itself. So there are two particular things. One is to support this technology, which I think we all agree is about time. The other is that it's about time that we do it right at the same time because, as you say, it affects the bottom line, the consumers, and of course the users as well. Those are the two main intents of the legislation as it is presented.

We Liberals see a need for that as well and we'll support that, but we'd like to see it done right so that the government doesn't come up six months from now to introduce another piece of legislation that will take care of other areas, as they will. We believe there should be room in this legislation now that takes care indeed of how this new commercial information technology will affect the users and the consumers at the end. That is our problem.

For example, I believe there should be a tie-in there with respect to privacy, confidentiality and even how it may affect the powers of the Integrity Commissioner, that the powers of that commission, for example, will not be affected by this piece of legislation. If they are not included in Bill 88, how will we manage to safeguard those privacy and confidentiality issues, including the powers of the commissioner?

We do support it, but I believe those are issues we should be dealing with to make sure that when we go into the marketplace we use it not only conveniently, safely and properly but also in a legal manner, that we do not affect either the welfare or the benefits of the end users nor infringe on the confidentiality and privacy of those people as well.

Have you had enough time to look at Bill 88 with respect to those specific issues?

The Chair: You have 30 seconds.

Mr Doig: I looked it over quite a bit. We already have a legal infrastructure, I believe, to take care of it. Second, I think that sometimes you have to move forward and some of these things will become available to you. It's sometimes better to move forward and find some mistakes and correct them then than not to move forward for months and months on end and a lot of people suffer.

Third, I think that with privacy it sometimes gets blown out of proportion in the Internet sphere. If you go into a store like Gap and you buy a piece of clothing and you pay with your credit card, they have your information. Nothing safeguards you from a regular commerce act. They have your information, they have you on file as a customer, and they can do what they want with it. It could be the same, that you don't need to have any extra protection through e-commerce. The privacy act should be separate, in that if I visit a site just to visit it, you shouldn't be able to get my information. That's a different issue, not to do with e-commerce. With e-commerce it shouldn't be any greater privacy than you already have when you go down to the local hardware store, or whatever you want to do, and purchase, and I think that should be taken care of. If you think the local hardware shouldn't be able to sell your information or keep you on file, then that's a much broader context than this bill.

The Chair: Thank you very much, Mr Doig.

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E-WITNESS INC MYTEC TECHNOLOGIES INC

The Chair: The next presenters are Janet Hebbes and Don Waugh of E-Witness and Mytec Technologies. Good afternoon.

Mr Don Waugh: I'd like to thank the committee for allowing us to do this presentation today. We are the last presenting group?

The Chair: Yes.

Mr Waugh: We moved forward. Would we be able to take a little bit more time?

The Chair: All of the delegations have been given half an hour, so if you can try to keep it within half an hour, we'd appreciate it. If you go a little over, I'm sure that we have a very flexible committee.

Mr Waugh: Thank you very much. I appreciate that.

We have a little agenda just to give you an outline of how we're going to approach this today. First, we thought we'd introduce ourselves and then talk about an application of the technology into a specific area. Of prime importance was to address confidentiality issues and then we wanted to review what PKI, digital signature technology, is and represents, in that it certainly is a technology that has been around for 20 years, to tell you the truth, and how it does provide protection to the consumer, protection that does not exist today.

Finally, we wanted to move into a demonstration of the technology that was developed by two Canadian companies, and we hope to be able to take a leadership

position in the marketplace, and then to review the proposed legislation and some impediments to our success that we would like to have considered by the committee, if that's OK with you.

To introduce E-Witness, our roots actually go back to one of the centres of excellence, CRESTech, which is the Centre for Research in Earth and Space Technology. This centre of excellence actually helped establish the Internet in Canada back in 1988. Our company, Cool Water Internet Design—we have developed for a number of companies, but what has happened is that we have developed a technology that addressed some of the requirements or solving a problem for allowing doctors to prescribe medicine over the Internet. Rather than hide this in Cool Water as an Internet company, we have established a separate company called E-Witness to capitalize on this technology, bringing it to the marketplace, the Internet space, and delivering a full PKI solution through a standard Web browser, which I'll tell you more about later.

We've also included biometrics in our implementation with our partner, Mytec, and that's led to our first joint venture, the establishment of Pharma Trust, which is a trust that will allow doctors to prescribe medicine over the Internet.

I'd like to turn things over to Janet, who will just give you a little bit of background about Mytec.

Ms Janet Hebbes: Good afternoon, Madam Chair and committee members. My name is Janet Hebbes and I'm director of business development with Mytec Technologies. Mytec is a biometric firm. We decided to concentrate on fingerprints as the biometric that identifies you as an individual. John Gregory spoke just a few moments ago and was identifying that it could be either an iris scan or a face scan or voice recognition. One thing to qualify is that when you're using Mytec and their product—like the brand Campbell soup; their brand is called Bioscrypt—you will always know when you are giving your fingerprint. You will never be mistaken in giving your fingerprint without your knowing.

Mytec is a Canadian company. Two gentlemen who started out of Chubb security developed an alarm system company called Counter Force. Many of you may actually have it in your homes. It's a private security system. This was started in 1988. The company went public on the TSE in 1993. This year we sold off Counter Force for about \$28 million. This was the cash cow that was sponsoring a lot of research and development for Mytec for our biometrics. We are going to the market with biometrics and our Bioscrypt as our algorithm, our software, and we're focusing on many of the different solutions, one of which John and his company have taken up.

I think everybody right now is very familiar with the different ways that you can authenticate who you are. If you take a look at this slide, many of us have PINs, personal identification numbers. This allows us access to our banks and to our credit cards. If you're in the office, you have to type in a password and you have to remember that password. In high security areas it could

be very long, 120 digits. You sometimes have to write it down. We all have the debit cards. Those first two things are only as good as you protect them. If you lend it to someone or if it's stolen, that's how fraud happens. With the biometric, we use your fingerprint. It's very secure and it only authenticates that it's you.

That big word down there, non-repudiation, I wasn't sure what that was. We're going to get to that a little bit later so that we have a clear understanding.

Why biometrics? Biometrics makes it convenient, it makes it safe and secure, and it offers non-repudiation. Don's going to show you a little bit later on this product we have that we're taking out, and it's actually being used. We call this our Bioscrypt Enterprise. Here's what happens. Actually, it's very cool. It sounds like a James Bond thing, not to be glib. What you do is take your fingerprint. What Mytec uses is called pattern recognition. If you look at your fingertip, there are thousands of points there. We don't use minutia, which other competitors do. We make sure that we get a scan of your fingerprint. You would go through and enrol and say, "I'm Janet Hebbes." Then what it does is take either the PIN or the password that you have and it embeds that password into the scan of your fingerprint. It scrambles it up and it creates a Bioscrypt, so it's like a piece of the pie, it's like a jigsaw puzzle. Never, ever is the fingerprint left on the server. What happens is, when you want to access it, everything is happening in this one unit, this one device, the Bioscrypt. Nothing is staying on the server, which means very simply that it's very non-threatening. There's never an infringement on your personal identification. That's one of the coolest things they have.

We're using Bioscrypt Enterprise, and Don's going to show you how he's incorporated that with his technology. In addition to Enterprise, we're also moving more into the portable, the m-commerce, mobile commerce. We're looking at telephones, we're looking at Palm Pilots, we're looking at Research in Motion, so that when you're walking around you'll actually have your telephone. If you want to make a trade you first have to verify that it's you, Janet Hebbes, who's going to issue 50,000 shares; at 4 pm on the TSE I'm making that trade.

What is the non-repudiation? My broker calls me up the next day and says, "That stock's gone down, Janet, just so that you know, by 50%." If I try to deny that, they say, "No, we've authenticated it because it was your fingerprint that actually unlocked the key." We do this in a very safe and secure manner.

My point in going through all of this is that for government and for us to understand the implication for Bill 88, the most important thing is that it's secure already. This is not about convenience. This is about security; it's about privacy. This is already being done.

The next point I want to make is that there is no infringement on the individual, on the person, so as far as fraud there is no way of ever getting in and taking that fingerprint. This is why legislation should be passed so that we can allow not only consumers but businesses in

the business-to-business section to be able to pass cheques and to do transactions such as the passing of deeds on-line. The technology is already here.

One of the ways you can see this—I think it's important for Don to share with you something he has used in conjunction with PKI, which is Public Key Infrastructure, not to get bogged down with the background of technology but to understand, as you've said, Tony, that the education is already there, it's already secure and it already looks at privacy.

Mr Waugh: One of the reasons we've chosen the Mytec device is because it did protect the fingerprint information. It did not release it. It actually encrypted it. It's called triple DES encryption, which means it's indestructible, impregnable. Not even the largest super-computer in the world today could penetrate this script. It means the confidentiality of the user is 100% guaranteed.

This is a Mytec device. This device has its own key. It's in the firm where you can't see it, you can't release it, you can't gain access to it. When you enrol in this, you create a template of yourself to which to compare. Once the enrolment has been done, that fingerprint template is encrypted triple DES under this device's key. This means the only place you can actually decrypt that file is inside this device.

Ms Hebbes: Not on the server.

Mr Waugh: Not on the server. It's not being passed around. You're not passing around your biometric information.

When you go to authorize a transaction, you scan your fingerprint, creating a current value. It then decrypts the template from when you originally enrolled and compares the two inside this device. If it is positive, it will release your private key, releasing it to the on-line transaction.

We had to be very, very concerned when we originally developed this because we're dealing with patient data. There are 266 million prescriptions prescribed by doctors in Canada every year. You can imagine if that type of information got released; it would be a catastrophe to people's lives and professions. It would undermine the whole trust environment.

1300

This technology in the past has not been available. The core of PKI has been around, as I said, for 20 years. It was developed by RSA; RSA is where the original technology was developed down in the States.

The biometrics has been developed. What we needed to do was actually deliver it in such a way that it could be used by a doctor and a pharmacist and that it would basically address five principles. These principles were established by colleges of pharmacists across Canada, and those five principles were:

(1) A method to guarantee the confidentiality of the patient's information, that it could not be released to anyone other than the doctor and the pharmacist—no other person or organization.

(2) There had to be a method to authenticate the doctor. In Canada, the only persons who can prescribe

medicine are the doctors themselves. They are licensed by the College of Physicians and Surgeons and one of their responsibilities is the prescribing of drugs. Because user names and passwords are so easy to give out—and there are many situations where the doctor has their user name or password on a sticky note on the terminal—it's very easy to release that. So the college required biometrics in order to authenticate the doctor 100% in the transaction.

(3) There had to be a method that would ensure the integrity of the script itself so it would not be subject to modification and duplication, because we are talking about the distribution of drugs in Canada.

(4) There had to be a method that would prevent the diversion of the script itself, so it couldn't be duplicated or diverted to another group, poly-pharmacying, poly-doctoring.

(5) Finally—and this was our challenge—we had to deliver this in a completely open architecture so that any doctor, any pharmacy could participate, regardless of operating system, regardless of network, regardless of the applications that they have deployed for managing their own internal operations. This is what led to the establishment of our PKI plug-in in a browser technology.

So there are basically two technologies at work here. One is the PKI; two is the biometrics. We had a choice of many other biometric companies to choose from. All the rest, by the way, are in the United States, which is important to note.

The E-Witness PKI plug-in for a browser—basically we are developing this in collaboration with the University of Toronto. Professor Ian Blake is a part of our algorithm development team. He is one of the leading experts in elliptic curve algorithm development, as well as standard RSA algorithms.

We have delivered it through a browser, which you will see shortly. It's simple to use. People understand what they're doing. It's being delivered through a browser. People understand that ubiquitous interface to many e-commerce applications, which means that it will support any e-commerce application. This is very important, because today there is no protection mechanism. If I order a stock over the Internet—and I've heard stories where a person claims they never made that order and they have no basis for arguing with their provider.

Ms Hebbes: Right, just like Visa. You can order a book from Amazon books, you get the book and it's already been charged to your Visa card. You get your book, you've got your statement, you call up Visa and you say, "I didn't order this book. Take the \$50 off my Visa account," and they will do that.

Mr Waugh: Eight per cent of delivered goods are actually resulting in cardholder repudiation or cardholder-not-present types of situations, and it's 22% for digitally delivered products. There are businesses, there are retailers being hurt today by this lack of support, a lack of a methodology that gives the legal and audit backup to the transactions you're actually conducting.

So it's simple to use, with a low cost of deployment. We have the opportunity to change the way in which consumers are protected, both in terms of the transactions they're deploying on the Internet as well as the information itself. We've done that in collaboration with Mytec and using the biometrics for the private key release, which is the fundamentals of PKI. You have the public key, the private key. Has that been explained to you?

The Chair: No.

Mr Waugh: This is the whole basis of this act, the public and private key. The mathematics is really quite tremendous. It's very simple, but basically if I encrypt with my private key it can be decrypted using my public key, so that anyone decrypting that document that I've signed using my private key has the assurance that it was actually signed by me because I used my private key. It's 100% assured when we attach that key or integrate it into the biometrics for key release.

If I encrypt it under the recipient's public key, then I know as the sender that only that recipient can actually decrypt it, which was a fundamental principle of the doctor prescribing medicine over the Internet and the pharmacist receiving that. Only those two individuals could see this information.

What I'd like to do now is actually turn over to the demonstration. This is Rahim Alibhai. Rahim works with E-Witness, CoolWater, was the principal architect in the development of this technology. We do not intend to lose him to the United States. We do intend to make this company grow here in Canada. That was one of the principles of the centres of excellence. So if we could just turn it over to Rahim.

Ms Hebbes: The PKI companies, by the way, are companies like Entrust, and e-Scotia is very much involved in initiating PKI. So it would be also instrumental to get their opinions on the act.

Mr Waugh: Entrust has been working with the Canadian government and the Ontario government for the last 16 years and now has 40% market share of the PKI market and is one of the leaders in terms of the delivery of digital signature technology.

This is a demonstration of a doctor prescribing medicine over the Internet. As you can see, there is a standard Web browser using a standard Web form. Basically, the doctor would indicate who the patient is and this will eventually be connected into the physician practice management system, so it updates the doctor's patient file automatically, actually increasing the accuracy of the patient file and therefore probably the quality of health care. It's simply a matter of choosing the drug for the patient and then, rather than just hitting "submit," what we're doing is encrypting that information that's in the form and then sending it. Part of the encryption process is actually the signing of the document by the doctor.

In this particular case, we're going to authenticate ourselves here. We're a little nervous—our fingerprints are moist—because of the importance of the presentation.

Ms Hebbes: CIBC has been using biometrics, just as a point, as far as physical access into their buildings. You

know how you have one of those pass cards to get into the building. You can give that pass card to anybody to get in but you still need your fingerprint to authenticate that it's you who's actually going in. So this biometrics as well, for your information, isn't new.

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Mr Waugh: This is leading-edge technology. It is part of the future.

If you'll bear with us during this period, we're going to try to do it. There we go. I scanned my fingerprint on the device. It took—

Mr Sergio: I don't think he was using his whole thumb before.

Mr Waugh: Maybe he used the wrong finger, which is nice about this technology. Say you're at an ATM machine and you've got someone with a gun to your head. With this technology I can switch fingers, and that could be my SOS finger, and let this transaction go through but send a 911 emergency call. There's a lot of things that you can do with this.

So I scanned my finger. It compared my finger to my biometric template which was imbedded in this device. It decrypted the template, compared the two, the two were equal and it released my private key to the process where it's taken that data—and, as you can see, it's come from Dr Don, but I don't know who the patient is. I can't see that, or the patient's address or telephone number. I do know what was prescribed by Dr Don but I don't know the dosage and I don't see the rest of the comments regarding the prescription itself. I'm going to go in as pharmacist Don since I was successful. Now, this is on the receiving side. I've identified myself as the pharmacist in this case.

This is actually coming off of the server that's in our offices in Toronto. This is not being retrieved locally.

Ms Hebbes: It's not canned. It's happening live.

Mr Waugh: The data, as you see, is still in its encrypted form. No one can read that unless they have the right keys. I'm going to once again authenticate. As a bona fide recipient, it's released my private key, allowing the data to be decrypted. We are protecting the patients' data and we can apply this to any consumer information, protecting the consumer but at the same time creating the legal environment that allows commerce to actually take place, which does not exist today, and that's my biggest concern from a business perspective. If JVC wants to receive a \$500,000 order from Future Shop, with this technology we have the ability to make that legally binding for JVC.

Ms Hebbes: Right. And it's not just the Bioscrypt that allows it to be binding. Do you want to go through all that?

Mr Waugh: We have another one, but I'd like to address our particular concern about the legislation.

We've been working very hard for the last year and a half to solve these issues and we consider this legislation of prime importance to commerce in Canada—in Ontario—in protecting the consumer, in protecting the

merchants, in establishing the legal environment under which our future can prosper. It's very important.

It's also catch-up legislation to the US and Europe. This technology has been around for 20 years—the RSA patent is actually being released; it's coming out of patent protection on September 20—and it's been the basis for many ways in which our armed forces and security organizations have protected information in the past.

It is the basis for electronic commerce and it's going to open up all sorts of opportunities for streamlining Canadian business operations, making us more productive and therefore increasing our standard of living. But I'm concerned. I'm concerned that the Elections Act has been kept out. With this technology we can allow shut-ins to vote, to participate in government. We can increase the frequency of their participation and we can make sure that you know it's coming from a person who has the right to vote.

I'm concerned that cheques are not allowed in here. You know, 1.8 billion ATM transactions are going through that are not protected, but 1.4 billion cheques are being processed every year here in Canada and they're being excluded. The cheque is the source of fraud in Canada. Companies are being hurt by employees who change the face of cheques and have them deposited in their own accounts. This technology would eliminate that.

Land transfers: With this, lawyers can be enrolled; we know who they are. They can do a land transfer on-line with this technology.

The message I would like to deliver is: Do not exclude these documents. If you can, include them. But if you can't include them specifically, include them subject to regulatory approval.

Ms Hebbes: And know that Mytec and E-Witness are only but a few companies that are in the same industry that are sharing the same technologies that make what you want to do possible, which is privacy security, no infringement on personal privacy.

We're open to taking any questions.

The Chair: Thank you for a very comprehensive presentation. I think we will allow one question, if you can try to keep it brief, please, members of committee. We'll go to the government side first.

Mr Wettlaufer: This doesn't really apply to the bill, but how would your technology apply to smart cards?

Ms Hebbes: I won't say where I was yesterday but it was pretty close to Bay and Wellesley. It applies very much to smart cards. We're very well aware of the Ontario smart card initiative that Angela Longo and her team are putting together. Mytec, as a biometrics company, can easily work in conjunction with a smart card. Let's just say that this is my smart card, and you have your chip that has your health insurance number, and maybe it has in the future your driver's licence number. If you want to have a Bioscrypt chip, a biometric chip on that smart card, it is easily applied there. If you only want

to get information about health records from that smart card, technology will enable that to happen.

Mr Wettlaufer: It will ensure complete patient confidentiality?

Ms Hebbes: Yes, 100%, and ensure that Janet Hebbes, with the correct spelling and address, because of her fingerprints, is only getting access to those services once.

Mr Sergio: I have no particular questions, but thanks for coming down. It was a good presentation. It's good to know that that is available and on the market, and hopefully we can put it to good use some time. Thank you.

Mr Martin: It certainly was good to have an example of how this works so we can get our heads around it. We're not techies, we're politicians, and sometimes I have to confess to not having all the knowledge or the answers to lots of really important questions. So it was good that you showed this today.

I just wanted to tell you that yesterday we had the bankers come before us to say that they were very leery of this whole area of biometrics and they were happy that we had centred it out in the document as something that wasn't going to be included, because as far as they were concerned the refining of that technology is years out and it's not dependable and has not been developed to the point where it actually could be used in the way that you've suggested here today.

Ms Hebbes: That's good. I haven't been in to all the banks yet, but you can rest assured that I'm on a mission there and that the technology is there for biometrics.

Mr Waugh: I'd like to comment on that if I could. Changes to the Financial Administration Act—I'm not certain where it actually occurs, but you'll have noticed ATM machines are now white-labelled because basically the door was opened to competition with the banks.

The bank is really two things: a method for moving money and a place to park it. Banks in making that statement are speaking in their own self-interest, because the longer they hold those papers in place the longer they control the flow of money in Canada. This technology has matured where we can guarantee its movement and guarantee who signed it and what was actually signed. They are acting in their own self-interest to delay that legislation, and I'm very concerned about that.

Mr Martin: I can share with you their presentation to us and perhaps give you the name of the gentleman who presented so that you might have a discussion with him about that. It certainly would be helpful.

The Chair: Thank you very much, Ms Hebbes and Mr Waugh, and you too, Doctor. We really appreciate your submission this afternoon.

That concludes the public representations to committee. I will remind committee that amendments are due by September 22 at 5 pm; clause-by-clause consideration will be on October 2 at 3:30.

The committee adjourned at 1321.

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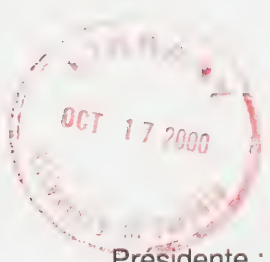
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**Standing committee on
justice and social policy**

Electronic Commerce Act, 2000

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Monday 2 October 2000

The committee met at 1534 in room 151.

ELECTRONIC COMMERCE ACT, 2000

LOI DE 2000 SUR LE
COMMERCE ÉLECTRONIQUE

Consideration of Bill 88, An Act to promote the use of information technology in commercial and other transactions by resolving legal uncertainties and removing statutory barriers that affect electronic communication / Projet de loi 88, Loi visant à promouvoir l'utilisation des technologies de l'information dans les opérations commerciales et autres en éliminant les incertitudes juridiques et les obstacles législatifs qui ont une incidence sur les communications électroniques.

The Vice-Chair (Mr Carl DeFaria): I'd like to call to order the meeting of the standing committee on justice and social policy for clause-by-clause on Bill 88.

I'll start by calling for debate on section 1. I understand that there have been 10 amendments filed. I understand Mr Martiniuk intends to ask for unanimous consent on changing one of the amendments. But we'll get to that.

Mr Gerry Martiniuk (Cambridge): With the consent of the committee, may I suggest that Mr John Gregory, who is the draftsman of this very technical though short legislation, be permitted to sit there as we're going through this matter in case there are any questions. When I say "there," I mean at the table opposite me.

Mr Richard Patten (Ottawa Centre): Yes. No problem.

Mr Martiniuk: Thank you. Mr Gregory.

The Vice-Chair: Mr Martiniuk, would you like to move that amendment?

Mr Martiniuk: No, I'll start off into a section, if I may.

The Vice-Chair: Let me start with section 1, and when we get to that section you can move the amendment.

Mr Martiniuk: Fine. Thank you.

The Vice-Chair: Is there any debate on section 1 of the bill?

Mr Martiniuk: Excuse me, Mr Chair, may I move the adoption of section 1? Until there's a motion on the floor, I don't think we can debate it.

The Vice-Chair: In clause-by-clause we can proceed. It's much faster to proceed. We assume—

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Lundi 2 octobre 2000

Mr Martiniuk: Assume away, Mr Chair.

The Vice-Chair: This is a government bill, so all those sections have been moved. I would just proceed with asking for any discussion. If there is none, shall section 1 carry? Carried.

Section 2: is there any debate on section 2? Seeing none, shall section 2 carry? Carried.

Section 3: This is the section, Mr Martiniuk, that you would like to move your amendment on.

Mr Martiniuk: I move that subsection 3(2) of the bill be struck out and the following substituted:

"Implied consent

"(2) Consent for the purpose of subsection (1) may be inferred from a person's conduct if there are reasonable grounds to believe that the consent is genuine and is relevant to the information or document."

The Vice-Chair: Any comments or debate on the amendment?

Mr Tony Martin (Sault Ste Marie): Could we have the counsel explain exactly what that means?

Mr John Gregory: There had been some concerns expressed by some counsel, both solicitor and litigators, about the wording of the provision in Bill 88. There is no intent in the motion to change the effect, which is that if you're going to imply consent you have to do it reasonably, and you can't imply consent to something out in the air. It has to be tailored to what you're dealing with.

The concern was that the expression "reasonable assurance" might suggest that you need some kind of document showing it. I'm not so sure, but it seemed to be an easy concern to allay just by saying "reasonable grounds" and saying that the consent applies to the information. There was a danger that it would be read too specifically, as if, "I consented to your saying yes, but I didn't consent to your saying no," which is obviously not the kind of argument we want to get into.

The amendment says that the consent has to be "relevant to the information or document." I don't think there is any change in the result. It just gets rid of a couple of lawyers' arguments that might be used to challenge it. If you're going to imply consent from conduct, you still have to believe on reasonable grounds that it's right and it still has to be relevant. As I said, I don't think we're changing the impact at all. We're simply getting rid of a couple of technical concerns.

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The Vice-Chair: Any comments or questions on this amendment?

Seeing none, shall the amendment carry? Carried.

Are there any further amendments? No.

Shall section 3, as amended, carry? Carried.

Section 4 has no amendments. Any discussion on section 4? Seeing none, shall section 4 carry? Carried.

There are no amendments to section 5. Any debate or comments on amendment to section 5? Seeing none, shall section 5 carry? Carried.

There are no amendments to section 6. Any comments or debate on section 6? Seeing none, shall section 6 carry? Carried.

There are no amendments filed on section 7. Any comments or debate on section 7? Shall section 7 carry? Carried.

Are there any amendments to section 8?

Mr Martiniuk: Yes, if I may explain, you have been provided with amendment number 2, I guess it is. That was filed within the appropriate time and sent out by this committee. Subsequent to that, certain parties suggested that the word "possession" in the amendment reading "possession of an electronic document" was inappropriate since the document was electronic, and that therefore "control of an electronic document" would be more appropriate under the circumstances.

I am asking the committee for unanimous consent to move a motion using the word "control" with the same wording as the amendment before you.

The Vice-Chair: Is there unanimous consent to this amendment to the amendment?

Mr Brad Clark (Stoney Creek): So you're deleting "possession" and you're adding "control"?

Mr Martiniuk: That's correct.

The Vice-Chair: Is there unanimous consent?

Mr Patten: Just a minute. Where is it in the bill?

Mr Clark: It's in the amendment.

Mr Patten: Subsection (4) is new?

Mr Martiniuk: Yes. It's a new subsection.

Mr Patten: Oh, it's an addition. OK.

Mr Martiniuk: Sorry, Mr Patten. I should have pointed that out.

Mr Patten: All right. So number (4) is a new subsection. Do you want to comment on it?

Mr Gregory: I'm not sure. The point of the amendment itself is to ensure that we do not have a claim under this act that someone is in possession of an electronic document and someone else has possession of a paper document that is the same document. Obviously that can't happen without somebody either being negligent or dishonest. Nevertheless, to avoid a conflict, what we're saying is that the electronic document will yield to a paper original in the case of being pledged as collateral.

This is something the bankers' association raised with us at the committee public hearings, so we talked to them to follow up on that. Their outside counsel was away the week we were doing the amendments, so they came in when it was too late to get a change and said we really

shouldn't talk about possession of an electronic document because that suggests holding it in a way that you don't hold it. "Control" is the word generally used for electronic documents. It's used in the United States legislation on the same subject. It's one that financial institutions recognize in dealing with electronic documents as security. It should say that control of an electronic document does not constitute possession under the PPSA. It's a technical amendment, but it's an improvement.

The Vice-Chair: Will you read the amendment, as amended?

Mr Martiniuk: I move that section 8 of the bill be amended by adding the following subsection:

"Exception, Personal Property Security Act

"(4) Despite subsection (1), control of an electronic document does not constitute possession of the original document for the purposes of the Personal Property Security Act."

The Vice-Chair: Do we have unanimous consent for this amendment to go through? I see that there is unanimous consent.

Shall the amendment carry? Carried.

Shall section 8, as amended, carry? Carried.

Section 9 has no amendments. Any comments or debate on section 9? Seeing none, shall section 9 carry? Carried.

I understand there is a government motion to amend section 10.

Mr Martiniuk: Yes. I move that section 10 of the bill be amended by adding the following subsection:

"Same

"(2) For greater certainty, the following are examples of actions that constitute providing electronic information or an electronic document to a person, if section 6, 7 or 8 is otherwise complied with:

"1. Sending the electronic information or electronic document to the person by electronic mail.

"2. Displaying it to the person in the course of a transaction that is being conducted electronically."

The Vice-Chair: Any comments or discussion on this amendment? Seeing none, shall this amendment carry?

Mr Patten: I have a question. There's always the sender's responsibility. Presumably, if there is a dispute following and someone says, "I didn't really receive the"—this is all subject, of course, to confirmation, probably in print form, of the communication for record purposes, is it not?

Mr Gregory: Certainly sections 6, 7 and 8 deal with a case where if someone is required to provide information—that might be in the form of giving notice, sending notice, whatever—the person who has that obligation is going to have to prove that they complied with it if there's a dispute.

There's another section in the act, later, that talks about presumptions of receipt of electronic documents, but it's never more than a presumption. Ultimately, if you want to be sure that the person has got it, you'd better get an acknowledgement or something which can say, "I can prove—"

Mr Patten: Confirmation that—

Mr Gregory: Yes. It doesn't have to be in writing, but it's whatever you can demonstrate to whoever has to decide your dispute.

The Vice-Chair: Any further comments or discussion?

Shall the amendment carry? Carried.

Shall section 10, as amended, carry? Carried.

There is a government motion to amend section 11.

Mr Martiniuk: I move that section 11 of the bill be amended by adding the following subsection:

"Seal

"(6) The document shall be deemed to have been sealed if,

"(a) a legal requirement that the document be signed is satisfied in accordance with subsection (1), (3) or (4), as the case may be; and

"(b) the electronic document and electronic signature meet the prescribed seal equivalency requirements."

The Vice-Chair: Mr Martiniuk moved the amendment. Any comments or discussion? Seeing none, shall the amendment carry? Carried.

Shall section 11, as amended, carry? Carried.

There is a government motion to amend section 12.

Mr Martiniuk: I move that section 12 of the bill be amended by adding the following subsection:

"Previously retained electronic documents

"(3) A legal requirement described in subsection (2) is satisfied despite non-compliance with clause (2)(c) if the electronic document was retained before the day this act came into force."

Interjection.

Mr Martiniuk: "Comes"? I'm sorry. The Chair has corrected me. The last four words should read "act comes into force."

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The Vice-Chair: Any comments or discussion on this amendment? Seeing none, shall the amendment carry? Carried.

Shall section 12, as amended, carry? Carried.

Section 13 has no motions for amendment. Any comments or discussion on section 13? Seeing none, shall section 13 carry? Carried.

On sections 14 to 18, there are no motions for amendment. Can we proceed with them together? Is that OK, Mr Patten and Mr Martin?

Mr Patten: Yes.

The Vice-Chair: On sections 14 to 18, inclusive, there are no amendments. Shall those sections carry? Carried.

Section 19: there is a government motion to amend section 19.

Mr Martiniuk: I move that section 19 of the bill be amended by adding the following subsection:

"Legal recognition of electronic contracts

"(3) A contract is not invalid or unenforceable by reason only of being in electronic form."

The Vice-Chair: Are there any comments or discussion?

Mr Patten: There were some exceptions identified at the beginning of the bill in the preamble. This would still not apply to wills or documents of that sort. Is that correct? This is only in e-commerce; this is transactions.

Mr Martiniuk: There are still other exceptions that are specifically excluded from the act, are there not, Mr Gregory? I think they're five in number, including bills of exchange.

Mr Gregory: That's right. In section 26 and following, the whole act doesn't apply, including this part. No, it's not pushing it farther.

Mr Patten: Fine.

The Vice-Chair: Shall the amendment carry? Carried. Shall section 19, as amended, carry? Carried.

Section 20 has no amendments filed. Any comments or discussion on section 20? Seeing none, shall section 20 carry? Carried.

Section 21: there is a government motion to amend section 21.

Mr Martiniuk: I move that section 21 of the bill be amended by striking out "has no legal effect" and substituting "is not enforceable by the other person."

The Vice-Chair: Mr Martiniuk moved the amendment of section 21. Is there any discussion to the amendment? No. Shall the amendment carry? Carried.

Shall section 21, as amended, carry? Carried.

Section 22: there are no amendments filed for section 22. Any comments or discussion on section 22? Seeing none, shall section 22 carry? Carried.

Section 23: again, there are no motions to amend. Any comments or discussion on section 23? Seeing none, shall section 23 carry? Carried.

Section 24: there is a government motion to amend.

Mr Martiniuk: I move that subsections 24(1) and (2) of the bill be struck out and the following substituted:

"Authority to prescribe, approve or provide form

"(1) Authority to prescribe, approve or provide a form includes authority to prescribe, approve or provide an electronic form and to prescribe requirements for its electronic signature.

"Authority to prescribe or approve manner of submitting form

"(2) Authority to prescribe or approve the manner of submitting a form includes authority to prescribe or approve that it be submitted electronically."

The Vice-Chair: Are there any comments with respect to this amendment?

Mr Patten: Can you elaborate on it, please?

Mr Gregory: The purpose of the amendment was just to ensure that wherever a form can be created, it can be created electronically. The original text of the bill says "authority to prescribe a form includes authority to prescribe...." It was pointed out—in fact, we noticed internally after the bill had been read—that there are a number of places where departments or ministers or the government are empowered to approve a form rather than prescribe it, or to provide a form, to hand it out to the public. We wanted to make sure those can be done electronically as well; it's not just where you need to

make a regulation that you can replace it. So there's no greater authority to make or provide forms, just matching the authority to go electronic, the authority to do it all, on paper.

The Vice-Chair: Any other comments? Shall the amendment carry? Carried.

Shall section 24, as amended, carry? Carried.

Again, sections 25 to 30, inclusive, have no motions for amendment filed. Can we again proceed with those together?

Mr Clark: Agreed.

The Vice-Chair: All right. Shall section 25 to section 30, inclusive, carry? Carried.

Section 31, there is a government motion to amend.

Mr Martiniuk: I move that paragraph 4 of subsection 31(1) of the bill be struck out and the following substituted:

"4. Documents, including agreements of purchase and sale, that create or transfer interests in land and require registration to be effective against third parties."

The Vice-Chair: Are there any comments or discussions?

Mr Marcel Beaubien (Lambton-Kent-Middlesex): As a layman, could you explain to me what the difference is between the present 4 and this 4?

Mr Gregory: In fact, this is put in to give greater comfort to the laymen at the Ontario Real Estate Association who wrote asking that it be clarified. They weren't sure whether documents that create or transfer interest in land, which is the original language, extended to agreements of purchase and sale. I think in the legal view it would include them, but just so that their members, the real estate agents who generally aren't lawyers, know for sure, it's right there in their face that these are covered, that when you are transferring land when you sign that agreement of purchase of sale the real estate agent gives you, that cannot be electronic. This is essentially put in to respond to the request from that association.

Mr Clark: I don't have a question about this amendment, but I do have a question about another section in this clause, so if we can come back to me?

The Vice-Chair: All right. Any other comments on this amendment? Seeing none, shall the amendment carry? Carried.

Mr Clark?

Mr Clark: I wonder if I could have some clarification in section 31 on paragraph 3. It talks about "Powers of attorney, to the extent that they are in respect of an individual's financial affairs or personal care." I'm not sure whether or not this would include advance care directives under the Health Care Consent Act.

Mr Gregory: It's intended to do that, sir. The power of attorney in respect to personal care would be an advance health care directive. The reason there is a limit—we didn't simply say powers of attorney generally—is that there are powers of attorney that are used in business reorganizations, for example, where one person in a complex series of incorporations will have the power of attorney to shuffle things around until all the docu-

ments are done and in the right place, the way the reorganization is supposed to end up.

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We thought that was not something where the parties need protection. They can do that electronically if they want. What we're trying to do with paragraph 3 is to ensure that individuals don't do things electronically when they may not know enough about what they're doing to do it right, but certainly a power of attorney for personal care is intended to cover an advance health care directive, and I think it would. That's what it does.

The power of attorney is not a term of ours in the sense that it's not limited by statute to anyone in particular; it is the power for someone else to act in a legally effective way for you. If I do that for my health care, saying, "If something happens to me, this is what my treatment to be," that's clearly a power of attorney, and "personal care" is put in here just to make sure that it's covered.

Mr Clark: There's some controversy in that you hear from people saying that an advance care directive is not a power of attorney. That's why I'm concerned that the advance care directive is not identified. There is controversy there. I'm not sure whether "power of attorney," as it's worded here, would actually deal with an advance care directive, and I don't think an advance care directive should be excluded from this exemption.

Mr Gregory: It's not intended to exclude them—

Mr Clark: But potentially it could be, in an argument.

Mr Gregory: I can't say that we would not face that argument. Obviously people will make that argument. It seems to me that argument would not succeed. If you've got an advance health care directive and you have a statute referring to power of attorney for personal care, it's very difficult to say that it's something different. I'm not sure what the procedure would be if there was something to include advance health care directives. Certainly as a matter of policy there would be no objection to putting that in, but I'm in the hands of the committee as to how that would be put in. As I say, there's no intention not to have them included in that paragraph. I don't think it's going to be a problem, but if there were a problem that the committee wanted to resolve, we could resolve it if everyone wanted to.

Mr Patten: Do we have legal counsel?

Mr Clark: There's legislative counsel.

Mr Martiniuk: Would legal counsel like to comment on the point raised by Mr Clark?

Mr Clark: Chair, I only raised the point because I know that Dr Willy Malloy has been advocating something called a "Let Me Decide" booklet. There's a form inside that patients can fill out and it's an advance care directive. It's not identified as a power of attorney. So there are advance care directives that are being completed and they're not powers of attorney. I'm not sure whether it fits in here.

The Vice-Chair: I understand that, Mr Clark. I'm hoping legal counsel will be able to advise us on that.

Ms Cornelia Schuh: I wasn't familiar with that issue. I agree with Mr Gregory that if the argument were to be made that advance care directives are covered by the Electronic Commerce Act because they're not powers of attorney, that's not an argument that would succeed. I think at the end of the day a court would conclude that advance care directives were really intended to fall under paragraph 3.

I wish I were more familiar with the specifics of the advance care directive. I'd be reluctant to give any kind of an opinion on it right here and now without having had a chance to check a few things. But my conclusion is that Mr Gregory is right, that an argument that an advance care directive can be made electronically would fail.

Mr Patten: Another way to put it would be that it would be subject to any powers of attorney; in other words, powers of attorney would take precedence. Is that what you're saying?

Ms Schuh: No. I'm saying that I think the court would read paragraph 3 as including advance care directives and say, "No, the Legislature did not mean to say that advance care directives can be made electronically even though powers of attorney in respect of personal care cannot."

Mr Patten: What would happen if we included that term in this amendment?

Ms Schuh: Well—

Mr Clark: Can I ask you a question? What's the difference between a living will and a power of attorney?

Mr Patten: A will is yours. A power of attorney is someone else's.

Ms Schuh: I don't think "living will" is a term that has a precise meaning. A power of attorney for personal care might be something that people could call a living will, depending on what's in it; so might an advance care directive.

Mr Martin: I was just wondering, in terms of this whole advance care directive, has there been a circumstance where that has been brought before the courts to determine whether power of attorney supersedes advance care directive, if there's an argument? Somebody may have a power of attorney signed and then come along and put in place an advance care directive that seems to be relatively new here. Are there precedents here now?

Mr Clark: Personally, I'm not aware of any precedents but I can see that there can be potential for it. You could end up having a power of attorney in one situation that was crafted with a family and then later on the person involved decides to take out an advance care directive with their physician. The two can be distinctly different.

Mr Martin: And be in conflict.

Mr Clark: Not necessarily, because the power of attorney could be around finances and not around personal care. That's why I raise the issue. They can be two distinctly different things.

Mr Gregory: That's why the act refers to two different things, of course, in respect of an individual's financial affairs or personal care. But what you call them

is less important than what they do. What they do is, they appoint someone else to make decisions for you when you're unable to do that. I can give a power of attorney for financial affairs simply because I'm out of the country and say, "Take care of my investments while I'm incommunicado." For personal care, of course, I have to be in the jurisdiction but I may well be incapable temporarily or permanently of dealing with that.

Mr Clark: That was my next point. Go ahead, Richard.

Mr Gregory: If you make two documents which are inconsistent, then that's going to be the same as making any other two documents that are inconsistent: the court is going to have to figure out which one gets complied with. It would usually be the later one, but there may be reasons why that's otherwise. But if I make a document saying my wife makes the decisions whether to pull the plug and then I make a later one saying my doctor gets to make that decision, then they're going to have to fight it out. I can't predict the outcome of that one in theory.

Mr Martin: Right now it seems to me that most people understand what a power of attorney is. This is the first time I've heard of advance care directives. I don't know what position we are in here, as relative lay folk in front of some very legal considerations, to begin to decide whether advance care directives should be in a piece of legislation that we're trying to put through the House. It worries me that we would do something that we could later regret. Otherwise, I have no difficulty. But I do have some difficulty if that's what it does.

Mr Clark: The other point that Richard and I kind of simultaneously thought of is substitute decision-makers under the Health Care Consent Act. For example, with Brian's Law we're moving forward with our amendments to the Mental Health Act, and substitute decision-makers go through the Consent and Capacity Board. The question is, do they fall under this also?

1610

The Vice-Chair: Mr Gregory, if I may just try to assist here: would paragraph 6 that talks about documents that are prescribed or belong to a prescribed class be something that the minister would, under regulations, deal with as these things come up?

Mr Gregory: I think that is exactly the kind of safety valve provision that we were using paragraph 6 for. Paragraph 6 is there not because we have a list of things we secretly want to do that we will spring on the world by regulation once the act is passed; it was really to say, "Oops, we forgot something. We don't have to reconvene the Legislature to exempt it." If there came a case where advance care directives were being made electronically, and someone decided relatively authoritatively that no, they are not powers of attorney—as I say, that's not my view, because they are—but if they weren't, it would be easy enough to make a regulation, when there's a problem, to say they're also excluded. The intent is that they should be excluded and if it ever came up, then we could exclude them. I don't think it's necessary to amend paragraph 3 at this point. We can use paragraph 6 if there

is a problem. There's no intent to have people making those electronically without a lot more safeguards than this bill provides.

The Vice-Chair: My understanding of a lot of these advance care directives and so on is that they are things that usually are done, but we didn't—for example, the power of attorney for incapacity has a certain definition under the Substitute Decisions Act which gives them exactly all the powers under the act and gives certain guidelines under which the attorney can act and so on. All the other things like "advance care directives" and "living will" are expressions that often are used by lay people but they're not really defined under any statute.

A living will, like counsel said, could be a Substitute Decisions Act power of attorney because you could specify certain things. But it's not a living will, because you're giving power to somebody else to act on your behalf. But often people use it as an expression for a living will.

Mr Clark: All I'm saying is, I'm raising the issue that under the Health Care Consent Act, the living will and advance care directives are real entities that exist today. Quite literally, if Dr Malloy or any other doctor out there who wants to be an entrepreneur begins to sell living wills or advance care directives on the Internet, this is why you should have it: here's the form, fill out the form, send it in, we'll do our end and it's done. I'm not sure if it's identified here. I raise the caveat because it is a potential.

The Vice-Chair: Are you satisfied with paragraph 6?

Mr Clark: I've raised my caveat.

The Vice-Chair: OK. Any other comments on this? I guess the ministry will take that into account.

Mr Martin: How about giving direction to the ministry to take a look at this to make sure that if there's a problem there, it's caught and covered.

The Vice-Chair: Under regulation.

Mr Gregory: Sure. As I say, the policy intent is definitely that they should be covered. If there's a risk that they are not, we can make a regulation once the act is in force to have that covered and have that in health care directives or living wills. As I say, I don't think "living will" means anything in law. We can designate them just to throw a blanket over the whole area if necessary.

Mr Clark: Along with that direction, then, I'd suggest that they talk to Ministry of Health lawyers to find out exactly what is involved and what that does mean so that the regulation can be properly worded.

The Vice-Chair: Any other comments on section 31?

Mr Patten: So are we going to pull this or stand this one down?

The Vice-Chair: No. Not unless—

Mr Clark: They want to fix it under regulations.

The Vice-Chair: I think the ministry has been alerted to it and they will take it into consideration under regulations if they feel that they need to.

Mr Gregory: I would certainly be happy to consult with Ministry of Health lawyers on that one and make

sure they're comfortable with this or, if they're not, that we make a regulation accordingly.

Mr Patten: I don't want to stand in the way of anything, but I think Brad has brought up a good point. The spirit of this we obviously disagree with is not a problem. But I'd feel more confident with some reaction from the ministry, having raised that. I don't know how urgent this is. My suggestion is we could still get it through very quickly, but if we had an opinion back quickly, we could pass everything else subject to this one, and away we go.

The Vice-Chair: Mr Martiniuk, I guess it's for you to respond to that.

Mr Martiniuk: I agree, and I will go on record that the ministry has received a recommendation, I think unanimously, from this committee that they will consult with the Ministry of Health solicitors to determine if there is any possibility of an ambiguity in regard that section. If there is, that ministry would consider a regulation that would specifically exempt if they saw fit. I think that's sufficient protection, surely, rather than holding up the bill. That's the very reason paragraph 6 is in there, "Documents that are prescribed or belong to a prescribed class," as I understand it.

Mr Patten: Sometimes these things have a way of coming back and biting you.

Mr Martiniuk: I'm going on record. That's as much as I can do, Mr Patten. It's on the record.

The Vice-Chair: Any other comments on section 31? Shall section 31, as amended, carry? Carried.

Mr Patten: One dissenting vote.

The Vice-Chair: Would you like to call for a recorded vote?

Mr Martiniuk: I'll consent to a recorded vote.

Ayes

Beaubien, Elliott, Martin, Martiniuk.

Nays

Patten.

The Vice-Chair: Carried.

Mr Patten: Just out of respect for my colleague.

Mr Clark: Thank you.

The Vice-Chair: Section 32 has a government amendment to it.

Mr Martiniuk: I move that clause 32(c) of the bill be struck out and the following substituted:

"(c) prescribe documents or classes of documents, requirements as to method for electronic signatures and information technology standards for the purposes of subsection 11(4);

"(c.1) prescribe seal equivalency requirements for electronic signatures for the purposes of subsection 11(6)."

The Vice-Chair: Any comments or discussion on the amendment?

Mr Patten: Subsection 11(6).

Mr Clark: It's one of the amendments.

Mr Patten: I just want to see what it is.

Mr Martiniuk: Actually, I had a question of Mr Gregory. The seal provision is cherished and antiquated anachronism. I'm curious as to how we would derive an equivalent electronically.

Mr Gregory: One of the reasons we are providing the regulation-making power is because the more you look at seals, the more different things they tend to do. Sometimes it's to show that you're taking it seriously if you put one of those little red sticky things on real estate. It says, "Hey, this is serious. This has legal effect." On the other hand, sometimes the seal is to authenticate the source. If you get something sealed from a public official, you say, "Wow, this is the official record."

Interjection.

Mr Gregory: Sure. There are other kinds of seals that replace consideration in a contract. There are different seals for different purposes and one size doesn't fit all essentially. What we're saying is, rather than trying to do something between committee and now, we may be able to find equivalents for some parts of it. The suggestion that was made at the committee, for example, was to

recite in the document "signed intending this to be under seal." If you sign that electronically, that will be deemed to be under seal. That's probably fine for taking it seriously, "All right, there it is," but it's not fine for showing the source. We said, "Well, gee, you could do one, but you can't do the other. We'd better just handle this a lot more cautiously."

Mr Martiniuk: Thank you.

The Vice-Chair: Any other comments?

Shall the amendment carry? Carried.

Shall section 32, as amended, carry? Carried.

Section 33: there are no amendments. Are there any comments or discussion on section 33?

Seeing none, shall section 33 carry? Carried.

Section 34: again there are no amendments. Any comments or discussion?

Seeing none, shall section 34 carry? Carried.

Shall the long title of the bill carry? Carried.

Shall Bill 88, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Unless there is any other business for the committee, we shall adjourn.

The committee adjourned at 1624.

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Mr Garry J. Guzzo (Ottawa West-Nepean / Ottawa-Ouest-Nepean PC)

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

Ms Marilyn Mushinski (Scarborough Centre / -Centre PC)

Substitutions / Membres remplaçants

Mr Brad Clark (Stoney Creek PC)

Mr Tony Martin (Sault Ste Marie ND)

Mr Gerry Martiniuk (Cambridge PC)

Mr Richard Patten (Ottawa Centre / -Centre L)

Also taking part / Autres participants et participantes

Mr John Gregory, general counsel,

Ministry of the Attorney General

Clerk / Greffier

Mr Tom Prins

Staff / Personnel

Ms Cornelia Schuh, Legislative counsel

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Official Report of Debates (Hansard)

Monday 23 October 2000

Journal des débats (Hansard)

Lundi 23 octobre 2000

**Standing committee on
justice and social policy**

Subcommittee report

Domestic Violence
Protection Act, 2000

**Comité permanent de la
justice et des affaires sociales**

Rapport du sous-comité

Loi de 2000 sur la protection
contre la violence familiale



Chair: Marilyn Mushinski
Clerk: Tom Prins

Présidente : Marilyn Mushinski
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Monday 23 October 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Lundi 23 octobre 2000

The committee met at 1536 in room 151.

SUBCOMMITTEE REPORT

The Chair (Ms Marilyn Mushinski): We'll call the meeting to order. Good afternoon, ladies and gentlemen. This is the standing committee on justice and social policy, to consider Bill 117, An Act to better protect victims of domestic violence.

Mrs Brenda Elliott (Guelph-Wellington): Chair, I move the adoption of the report of the subcommittee. Do you need me to read that out?

The Chair: That needs to be read into the record.

Mrs Elliott: It reads as follows:

Your subcommittee met on Monday, October 16, 2000, to consider the method of proceeding on Bill 117, An Act to better protect victims of domestic violence, and recommends the following:

(1) That the committee meet in Toronto on October 23, 24, 30, and 31 for the purpose of holding public hearings and that the committee will meet on November 14, 2000, for clause-by-clause consideration of the bill.

(2) That the Attorney General and appropriate ministry staff be invited for one hour to provide a technical briefing on October 23, 2000. Following this briefing, each of the three parties will have 30 minutes to make statements and ask questions.

(3) That scheduling will be accomplished by means of four lists. One list will be created by each of the three parties and the fourth list will contain the names of those people who contacted the clerk directly. Each party's list must contain a prioritized list of proposed witnesses and must be provided to the clerk by noon on Thursday, October 19, 2000. The clerk will divide the available time equally among the four lists.

(4) That the clerk have an advertisement placed once in the Toronto Star, the Globe and Mail and the National Post. The advertisement will also be placed on the Ontario Parliamentary Channel and on the Internet.

(5) That witnesses will be offered 20 minutes to make their presentation.

(6) That the Chair will accept requests by witnesses to have their expenses paid by the committee if the witness is from out of town and the request is reasonable.

(7) That the legislative research officer will prepare a number of background papers as well as a summary of recommendations.

(8) That there will be an opportunity for each party to take five minutes to make opening comments at the beginning of the clause-by-clause process.

(9) That the deadline for written submissions is November 9, 2000, at 12 noon.

(10) That amendments should be filed with the clerk by November 9, 2000, at 12 noon.

(11) That the clerk has the authority to begin implementing these decisions immediately.

(12) That the information contained in this subcommittee report may be given out to interested parties immediately, as opposed to after the committee has voted on it.

(13) That the Chair, in consultation with the clerk, will make any other decisions necessary with respect to this bill.

Mr Peter Kormos (Niagara Centre): Chair, at the subcommittee meeting, with the allocation of the 20-minute time slots, there was some contemplation about whether or not that would be appropriate in terms of the number of people applying to speak to the committee. I wonder if we've got some sort of report on the numbers. If the numbers are low, then 20 minutes obviously is fine. Do we have to address that?

The Chair: My understanding from Mr Prins is that at this point the 20 minutes seems to be fairly reasonable, based upon the responses we've been getting.

Mr David Tilson (Dufferin-Peel-Wellington-Grey): Madam Chair, I'd like to speak to the committee on items 9 and 10 of the report. I gather there has been some confusion as to what this date was. Originally it was the 12th and now it's the 9th. The ministry would prefer that the date for both those items be the 7th, which would be a Tuesday. The rationale is that the date of November 7 for both items 9 and 10 is one week after the public hearings and it'll be one week before clause-by-clause. Ministry officials feel they would prefer to have a full week to consider the written submissions as well as the amendments that would be filed.

I hope there would be unanimous consent from all committee members to change the date on items 9 and 10 from November 9 to November 7.

The Chair: Would you want the time to remain at 12 noon or would that be moved to 5 pm?

Mr Tilson: The time's fine.

The Chair: Is the committee in agreement with that? OK, so we have a motion to change the dates outlined in

clauses 9 and 10 to November 7. All in favour? That carries.

Can I have a motion to adopt the report of the sub-committee? All in favour? That carries.

DOMESTIC VIOLENCE PROTECTION ACT, 2000

LOI DE 2000 SUR LA PROTECTION CONTRE LA VIOLENCE FAMILIALE

Consideration of Bill 117, An Act to better protect victims of domestic violence / Projet de loi 117, Loi visant à mieux protéger les victimes de violence familiale.

MINISTRY OF THE ATTORNEY GENERAL

The Chair: Then we'll go to Mr Tilson, the parliamentary assistant to the Attorney General and native affairs. Congratulations, Mr Tilson.

Mr Tilson: Thank you, Madam Chair. It looks like I'm listed to speak now. What I would prefer we do at this particular point of the agenda is that I introduce the two individuals listed on the agenda who come from the Attorney General's office to give the committee a technical briefing, and that any comments I make would be in the half-hour time slot each caucus is given, that my time slot be at that time.

The Chair: So we'll hear from Anne Marie Predko and Ms Kuras first?

Mr Tilson: Sure. I'll introduce them to you, Madam Chair, and members of the committee, if they could come forward to the table. Anne Marie Predko is counsel to the Ministry of the Attorney General. With her is Joana Kuras, who is the executive lead of the victims' services of the Ministry of the Attorney General. They will make a technical presentation at this time.

Ms Joana Kuras: Good afternoon. By way of background, I would like to provide some information about events that brought us to this hearing today and to the introduction of Bill 117.

In December 1998, the provincial government created a committee composed of community experts in the field of domestic violence and senior government officials called the Joint Committee on Domestic Violence. This committee's mandate was to provide advice to government on the implementation of jury recommendations from the inquest into the deaths of Arlene May and Randy Iles. The joint committee tabled its report in August 1999.

The report of the joint committee contains 16 strategies to address domestic violence in Ontario. Strategy 5 is entitled "Ensure consistent enforcement of restraining orders and explore strategies to improve their effectiveness." There are 10 recommendations under strategy 5. If passed, Bill 117 and its related policy changes would respond to these 10 recommendations.

Specifically, recommendation 63 asked the Ministry of the Attorney General to establish a task group to

critically examine restraining order policy and practice and to determine if new civil legislation was necessary. In September 1999 the ministry established the task group on restraining orders. The members were drawn from relevant divisions in the Ministry of the Attorney General and the Ministry of the Solicitor General, including representatives of the OPP. That committee has now reported, and as a result Bill 117 has been tabled.

I will ask Anne Marie Predko now to provide you with the technical briefing on Bill 117.

Ms Anne Marie Predko: Good afternoon. As counsel in the policy branch of the Ministry of the Attorney General, I am pleased to provide you with the technical overview of Bill 117, An Act to better protect victims of domestic violence. This presentation will be divided into three main parts. Joana Kuras has given us the first, which is an overview of the background which led to the development of the proposed legislation. I will next provide an overview of the major components of the bill and the effect of these components. For your reference while we discuss the bill, in your material provided to you by the clerk, there is a compendium of the bill contained at tab 4 and the text of the bill itself is contained at tab 1. At the end of this presentation, there will be an opportunity to ask technical questions relating to Bill 117.

Since 1989, there have been a number of attempts to strengthen the existing restraining order system in the province of Ontario. Currently in Ontario, under the Children's Law Reform Act, a person with custody of or access to a child can seek an order restraining another person from annoying, molesting or harassing the applicant or the children. Under the Family Law Act a married spouse or a common-law spouse or same-sex partner can seek an order restraining their former spouse or partner from annoying, molesting, harassing or communicating with the applicant or the children. Persons only qualify as a common-law spouse or same-sex partner if they have resided with their partner for a period of three years or reside together in a relationship of some permanence and are together the parents of a child. Neither the Children's Law Reform Act nor the Family Law Act contains any criteria for a judge to consider when deciding whether to grant a restraining order.

Breaches of existing restraining orders are provincial offences, punishable for a first offence by a fine of up to \$5,000 and imprisonment for up to three months or both. On a second or subsequent offence, punishment increases to a fine of up to \$10,000 and imprisonment for up to two years or both.

A number of technical difficulties flow from the vague wording of the existing legislative provisions, and enforcement through the Provincial Offences Act. These include inconsistency in the level of evidence required to obtain a restraining order. In some locations in this province, these orders are routinely granted on consent without any evidence provided to the court. In other locations, serious conduct which affects the safety of the applicant or the children must exist.

Persons affected by the order may be confused about the meaning of the terms "annoy, molest or harass,"

including the applicant, the person who's restrained by the order and, at times, the police.

The orders may contain exceptions for specific purposes; for example, under the existing restraining order, a common type of phrase would be "the respondent shall not communicate with the applicant except for the purpose of discussing child access." This makes it difficult to enforce the order due to the potentially broad interpretation of this exception.

Enforcement through the Provincial Offences Act leads to confusion because several types of courts could be the forum of prosecution for this offence, including provincial offences court, criminal court, specialized domestic violence courts and Family Court.

Enforcement through the Provincial Offences Act also means that the conditions of release are more limited than under the Criminal Code. The accused who is accused of breaching a restraining order cannot be held beyond 24 hours under the Provincial Offences Act, even if he or she is deemed to be a safety risk, and a fine is the most common outcome of a charge for breach of restraining order.

After reviewing these legislative concerns, the policy and practice currently surrounding restraining orders, the task group on restraining orders recommended the development of new civil restraining orders legislation.

1550

Bill 117, if passed, would provide for intervention in cases of domestic violence by building and expanding upon elements currently found in existing provincial legislation. In preparing this bill, staff reviewed existing legislation in Alberta, Manitoba, Prince Edward Island, Saskatchewan and the Yukon, as well as some American states, New Zealand and Australia.

The bill defines "domestic violence" to include acts or omissions that cause bodily harm or damage to property, physical assaults and threats that cause a person to fear for his or her safety, forced physical confinement, sexual assault, sexual exploitation, sexual molestation and any series of acts which collectively cause a person to fear for his or her safety. This definition is found in subsection 1(2) of the bill. The acts or omissions listed in that section can be against the applicant, a relative of the applicant or any child.

The bill allows the following persons to apply for an intervention order: spouses as defined within the Family Law Act, former spouses, same-sex partners, former same-sex partners, persons who are cohabiting in a conjugal relationship, persons in a dating relationship and relatives who reside together. The definition of persons who can apply for an intervention order is contained in subsection 2(1) of the bill.

The bill provides for two types of intervention orders: an intervention order and an emergency intervention order. An application for an intervention order would be made in a non-urgent situation, with notice to the respondent, to a Superior Court judge. An application for an emergency intervention order would be made in an urgent situation, without notice to the respondent, to a Superior Court judge, a designated provincial court judge

or a designated justice of the peace. Under the bill, provincial court judges or justices of the peace would be designated to hear applications for emergency intervention orders 24 hours a day, seven days a week. The designation section is contained in section 13.

The bill allows a Superior Court judge to make an intervention order if he or she is satisfied that domestic violence has occurred and that a person or property may be at risk of harm or damage. The intervention order may contain a range of provisions, including: restraining the respondent from being near any specified person or place, from contacting any person or from engaging in any specified conduct that is threatening, annoying or harassing to any person; requiring the respondent to vacate the applicant's residence; requiring police to escort a specified person to the applicant's residence to remove a person's belongings; requiring a peace officer to seize weapons and weapons permits, where the weapons were used or threatened to be used to commit domestic violence; granting the applicant exclusive possession of the residence; requiring the respondent to compensate the applicant for any financial losses caused by the domestic violence; granting either the applicant or the respondent temporary possession and exclusive use of specified personal property, such as a car, bank accounts or bank cards; restraining the respondent from dealing with property in which the applicant has an interest, again such as bank accounts or the property that the parties might share together; and requiring the respondent to attend counselling or to pay for a child's counselling. This range of available provisions is contained in subsection 3(2) of the bill.

The bill allows a Superior Court judge, a designated provincial judge or a designated justice of the peace to make an emergency intervention order if he or she is satisfied that domestic violence has occurred, a person or property is at risk of harm or damage, and the matter must be dealt with on an urgent basis for the protection of a person or property that is at risk of harm or damage. This is a three-stage test that's required for the emergency intervention order which can be compared to the two-stage test that is required for a regular intervention order on notice. The third stage of the test is that the matter must be dealt with on an urgent basis for the protection of a person or property that is at risk of harm or damage. An emergency intervention order may only contain the first seven provisions contained in subsection 3(2) of the bill. These are restraining the respondent from being near any specified person or place, from contacting any person or from engaging in any specified conduct that is threatening, annoying or harassing of any person; requiring the respondent to vacate the applicant's residence; requiring police to escort a specified person to the residence; and requiring a peace officer to seize weapons and weapons permits where the weapons were used or threatened to be used to commit domestic violence. These provisions that can be contained in an emergency intervention order are aimed at the personal and immediate safety of the victim of domestic violence.

The bill provides that every emergency intervention order must advise the applicant and the respondent that they are entitled to a hearing before the court for the purpose of asking for a variation or termination of the order. This is subsection 4(8) of the bill.

An emergency intervention order made by a designated provincial judge or justice of the peace must be reviewed shortly thereafter by a Superior Court judge. If the Superior Court judge is satisfied that there was sufficient evidence before the designated provincial judge or JP to support the granting of the emergency intervention order, and there has been no request for a hearing, the Superior Court judge shall confirm the order. If the Superior Court judge is not satisfied that there was evidence before the designated provincial judge or JP, then the Superior Court judge shall order a hearing. At the hearing, whether it's ordered by the Superior Court judge or whether it's requested by the applicant and the respondent, the Superior Court judge may confirm, vary or terminate the emergency intervention order. These provisions are contained in sections 5 and 6 of the bill.

The bill provides that breaches of emergency intervention orders and certain provisions of intervention orders shall be enforced by peace officers under the Criminal Code of Canada. Breaches relating to no contact with the applicant or other persons, vacating the home and weapons are police enforceable. Breaches relating to property, monetary compensation and counselling can be enforced by the Family Court through the respondent posting a bond or entering into a recognizance.

The provinces of Alberta, Saskatchewan and Manitoba utilize section 127 of the Criminal Code to enforce their domestic violence legislation that is similar in intent to this bill.

The bill provides that the applicant or respondent to an intervention order may make a motion to the court at any time, upon notice to the other party, to vary or terminate the order. The court must be satisfied that there has been a material change in circumstances before changing the order.

At section 10, the bill provides that the court, when reviewing an intervention order at a hearing or at an application to vary or terminate the order, shall consider current family law orders and may, if it is authorized under the family law legislation affecting the order, change the family law order to the extent necessary to provide protection under the intervention order. The bill also provides that an appeal from an intervention order may be made to the Divisional Court.

The bill gives the Family Rules Committee, subject to the approval of the Lieutenant Governor in Council, the authority to make rules under section 68 of the Courts of Justice Act and in relation to the practice and procedure in proceedings under the proposed Domestic Violence Protection Act. The Attorney General may require that the Family Rules Committee make, amend or revoke a rule. If the Family Rules Committee does not do so, the Lieutenant Governor in Council may make a regulation that carries out the intent of the Attorney General's

requirement. These provisions are contained in sections 17 and 18 of the bill.

The bill amends the Courts of Justice Act so that, if passed, the Domestic Violence Protection Act would be within the jurisdiction of the Family Court in the province. It also repeals section 35 of the Children's Law Reform Act and section 46 of the Family Law Act. In terms of the repeal of those two sections, which are the existing restraining order provisions, the bill has been drafted to allow these provisions to be repealed in stages if required.

At this time, if people have questions of a technical nature—

The Chair: Have you finished your submission?

Ms Predko: Yes.

The Chair: OK. I believe what we were going to do was give half an hour to each party, at which time they could both ask questions and make their speeches or submissions.

1600

Mr Kormos: Chair, if I may, the subcommittee gave an hour for this submission, but subject to what other people might tell me in terms of correction, my impression was that we were going to be somewhat, dare I say, liberal.

Interjections.

Mr Kormos: It irks me as much as it does you. We've got two hours left, so I'm wondering if we could agree that we'll share the remaining two hours.

The Chair: Yes, I had also anticipated that fairly conservatively at two, I might add.

Mr Kormos: And my approach is somewhat radical, I understand.

Mr Tilson: Seriously, I don't know whether it's being suggested that the three parties split the remaining 25 minutes or whatever it is, but I don't have a problem with that, if that's what you're asking. As I understand it, each caucus was going to have half an hour to either speak or ask questions. Mr Kormos is perfectly correct: we now have 20 to 25 minutes' leeway. I don't have a problem if you divide that among all three caucuses.

The Chair: We'll give each party about 40 minutes. Is that OK?

Mr Tilson, I believe you mentioned in your introduction that you wanted to add after the submissions of the ministry. Is that correct?

Mr Tilson: Actually, I'll just be part of the government questions and comments.

The Chair: OK, because normally I would hear from the Liberal side first.

Mr Tilson: That's fine. I have no problem with that.

The Chair: Mrs Bountrogianni?

Mrs Marie Bountrogianni (Hamilton Mountain): I'll let the lawyers ask the really technical questions.

The Chair: We'll give you until about a quarter to five, OK?

Mrs Bountrogianni: I may not need that long. I'll give the rest to my colleague. I saw in Hansard where the former parliamentary assistant—the order might include

“ordering counselling for children at the alleged abuser’s expense.” Is that correct? Is that part of the bill?

Ms Predko: Yes, that’s correct.

Mrs Bountrogianni: I’d like to ask, will the province or legal aid or some other funding agency pay for the children’s counselling if the alleged abuser cannot pay for it? Let’s face it: in many of these cases, the alleged abuser can’t pay, so is there any backup plan or any—

Ms Predko: That’s a resourcing issue in the process that would obviously need to be addressed. It’s not something that is within the context of a briefing the Ministry of the Attorney General could give you, but I certainly could touch base with other ministries that would be responsible for that type of information.

Mrs Bountrogianni: I would appreciate that. I’m not being critical here. There are actually quite a few points I like. I’m a child psychologist, and from my experience I know that alleged abusers often don’t have the money or hide the money or don’t want to or delay, and counselling is very important. If another ministry can get back to me on that, that would be great. Mr Tilson, will you make that commitment to ask if the other ministries can provide—

Mr Tilson: Absolutely. My understanding is that the ministry is going to be providing resources in a number of areas. But in terms of what you’re speaking of now, my belief is that there are already resources put forward in the victims of crime process to assist the type of people you speak of. In answer to your question, we’ll be pleased to clarify that.

Mrs Bountrogianni: A similar question for the counselling for abusive partners—I guess I’d like that to go for those as well, Mr Tilson. Again, professionally speaking, sometimes it’s a little late at that point, and the counselling of children is extremely important.

The Ontario Women’s Directorate used to fund counsellors going into the schools and speaking to violence prevention. Again, as a former employee of a school board, I would partner with some of these counsellors and we would go in together and talk about the signs of abuse and so forth. The majority of that funding was cut. Today there were some announcements on more funding. I’d like to know if this ministry values that sort of counselling and, again, if they can get the appropriate ministry to get back to me on that—once Mr Kormos stops distracting the parliamentary assistant.

Mr Tilson: I’m sorry. You’ll have to repeat what you were saying.

Mrs Bountrogianni: Basically, a very similar issue to what I said earlier.

The other question is, presumably then the courts will be busier with this bill. The women will have another road to go to, once they’re in this terrible position. Is there then more access or more funds for legal aid? Because it is very difficult even right now for women to access legal aid.

The Chair: Does anyone from the ministry have an answer for that?

Mrs Bountrogianni: Are there plans to increase legal aid for women to be able to access the positive steps in this new bill?

Ms Kuras: There are no plans at this point, that I am aware of, to increase funding for it. However, legal aid certainly has made a commitment to ensuring that women who are facing domestic violence are a priority for legal aid certificates and legal aid services.

Mrs Bountrogianni: We’ll underline that one. I guess my other point is that 75% of women don’t report their abuse. I know that the Attorney General’s not responsible for those 75% but I feel that I have to talk about the 75%.

Mr Tilson: A good point.

Mrs Bountrogianni: It is a good point. Again, with someone from a different culture, there are sometimes cultural reasons why they don’t report right away—sometimes they’re personal reasons, sometimes they’re psychological reasons—but we cannot criticize women who don’t want to report; we just have to try to make it easier for them to report.

I was in the women’s centre in London on Saturday. I just want to read you some statistics for the record before I hand it over to my colleague. Last year, they turned away 685 women—I guess this is underlining need for more shelters. They admitted 703. This year, to date—we haven’t got a complete year yet—they’ve already turned away 869 women at the Women’s Community House in London, Ontario. I guess my plea on the record is—even though I know this is a different ministry—it’s wonderful what you’re doing, but it will not address the big picture of domestic violence and I look forward to you or your minister influencing the other ministers involved in domestic violence legislation.

Mr Tilson: Is that a question?

Mrs Bountrogianni: It’s just a statement to you, and I’m hoping that you’ll talk to your other ministers.

Mr Tilson: May I respond to what she said?

The Chair: Please.

Mr Tilson: You’re actually right. Horrific crimes happen. How do you get women, and specifically women—the bill is designed for a number of people with domestic violence, but a large percentage would be women, and your point is certainly well taken—to even deal with it?

We believe this bill is going to provide more confidence in the system for women, to use your example. It will be easier to approach the police, to approach justice officials. When a police officer arrives at a home, for example, where there are problems, the police officer will have an easier time in assisting the woman to deal with these horrific issues that have developed. It may not be the solution, but we believe that this bill will make it easier for women to have more confidence in the system to deal with these horrific crimes.

The Chair: Members of the committee, I have received a request to go in 15-minute rotations rather than 40 minutes.

Mr Tilson: Madam Chair, you can direct me here. I don’t know what I’m supposed to do when comments are made. I am here as the parliamentary assistant, and

whether I am supposed to respond or wait until the end, I'll do whatever you wish.

1610

Mr Michael Bryant (St Paul's): I can tell you, I'll direct my questions—I think it makes sense—to the government. If I am sending a question to them that I should send to Mr Tilson—I think we should give them a time to respond. But I like the idea of rotating.

The Chair: OK. We'll go to Mr Kormos next, then, Mr Bryant?

Mr Bryant: Do we have time left in my 15?

The Chair: No, you don't actually.

Mr Bryant: Fair enough. Then let's rotate to Mr Kormos.

Mr Kormos: We've got to be quick because we don't have a whole lot of time.

On the legal aid issue, on Friday morning a constituent in my office, a woman who was last in our office a year ago, wrote to the Niagara Regional Police because of some concern she had about the police not enforcing a Unified Family Court restraining order coming out of St Catharines. Mind you, the police responded appropriately, but the problem is now her spouse—three kids. She gave me permission to talk about this today. NCDC, Niagara Child Development Centre, for instance, has refused to do any more supervised access because the father is being just so outlandish. He has renewed the litigation. She can't find a lawyer to represent her on legal aid, because of the block constrictions on funding for legal aid representation in family law. Lawyers simply aren't doing it. So she's got to pay to defend herself against what is, from a layperson's view, probably frivolous or vexatious litigation—I know those are legal terms and I'll leave that to the lawyers—so she's out a good 10 grand-plus.

To boot, she had one of those alarms that the local committee, with Women's Place being a part of the committee, gave her some year and a half to two years ago, because that's when she was having a problem with the first instance with the restraining order and the constituency office got involved. The husband had backed off. She had to return the alarm, because of course there's a shortage of them. There were no incidents.

But I'm going, "Holy zonkers, Jane." We're pre-Christmas, the litigation is set for mid-November, the husband's taking her back to Family Court and raising all these access and custody issues, and wants the restraining order from the original Unified Family Court withdrawn or abandoned. We're entering a very volatile time frame. There's the combination of the litigation going back into court, the guy's being denied access effectively because supervisory services won't supervise the access any more, and we're entering Christmas season, with all the emotions that accompany that. I'm going, "Holy zonkers, if you ever needed an alarm, it's now." And that's no criticism of anybody. Of course, she then has to go back on to some sort of a waiting list, I'm told, to access one and she's not going to have priority, because the guy hasn't been harassing her recently, but surely she's at a

higher risk now, with the upcoming litigation along with Christmas season and all the other stuff that goes on with it.

So I share, I've got to tell you, the concerns about the adequacy of legal aid funding, because the nature and the manner in which they fund has excluded a whole lot of family practitioners from representing people in family cases.

Let's get down to the bill. There are a couple of very specific things. Section 3, or I suppose even the interim or emergency orders: why is the word "and" between paragraphs (a) and (b)? In other words, why does the trier there have to conclude not only that there was domestic violence but "and" that person has to find that there may be risk of harm. Why isn't it "or"? What do they call them, Mr Bryant, a conjunctive? Seriously, why isn't it merely a conjunctive "or"?

Ms Predko: The drafting in this section is trying to address an issue that has been a problem in existing restraining order provisions, which was that there were no criteria for the judge to follow. In terms of domestic violence having occurred in the past and then there's some future risk, in the case of an intervention order, that something will happen again, I think if the two events are contemporaneous, in that something happened in the recent past, yesterday or last week, there should be no difficulty flowing to the second stage of this test. I agree with you that where the events are not exactly contemporaneous, as in the situation that you've described, it's more difficult, and that's why the level of the test is "may be" at risk. There only needs to be a possibility of risk for the situation to qualify in order to get a restraining order.

Mr Kormos: OK, gotcha.

Ms Predko: One of the problems with the existing enforcement regime is that there are a lot of orders on the CPIC system that do not relate to domestic violence at all.

Mr Kormos: We're going to get to that. Going back in terms of the definition of "domestic violence," why does subsection 1(2) read "domestic violence means the following acts"? Why doesn't it say it "includes the following acts," so as not to be restrictive? You've got to agree with me that there are some clever lawyers out there who are going to argue that the act that's the foundation for this application doesn't fall within those six areas. I don't know a whole lot about this, but when it says "means" as compared to maybe saying "includes," that means the person hearing it could be in a position of saying, "Oh, oh, I can't grant a restraining order, because you're right, high-priced Toronto lawyer, it doesn't technically fall within those six categories." Why doesn't it say "includes" instead of "means"?

Ms Predko: The question is, why is the list exhaustive as opposed to inclusive, from a drafting perspective?

Mr Kormos: Yes, ma'am.

Ms Predko: It's exhaustive because these were the anticipated limitations of domestic violence in terms of the definition. This definition is an adaptation of defini-

tions that are used in other jurisdictions in the country, and it's also a further adaptation of part of the definition as put out in the Joint Committee on Domestic Violence report.

Mr Kormos: But do you agree that "includes" would broaden the area a whole lot and prevent those technical arguments from being made against a restraining order?

Ms Predko: I'm not going to answer the second part of your question.

Mr Kormos: Why not? You answered the first part. Either you agree or you don't agree.

The Chair: Give her a chance.

Mr Kormos: I know; I knew that.

Ms Predko: You've asked me two questions. You've asked me if I agree that "includes" would expand the list. Yes, I do. Do I agree that it would address the technical arguments that lawyers are likely to make? I can't say, because really it's going to be for a judge to interpret the legislation, not for counsel to interpret the legislation.

Mr Kormos: Fair enough. Is there a difference between "on the balance of probabilities" and "reasonable and probable grounds to believe" in terms of the test or the standard?

Ms Predko: In terms of legal tests, those are used in two different locations in law. The "balance of probabilities" is a sort of a 50%-plus-one type of test. "Reasonable and probable grounds to believe" might be a lower test. It's a test that means, from a legal perspective, that you have examined all of the information that you have available to you and that a reasonable person could move from where you are, in terms of your knowledge, to where you think this process is going. It's a test that's normally used in a criminal context for—

Mr Kormos: Assault charges.

Ms Predko: Well, for investigative purposes, I guess, to put it that way, where an officer faced with particular circumstances has to decide.

Mr Kormos: Quite right. The reason I'm asking that is because section 4 with the *ex parte* order, the emergency order, uses the same test as the order "upon application with notice" and "the balance of probabilities." I don't quarrel with "balance of probabilities" for being the appropriate test when you've got a "with notice," where it's litigated. But in the context—I'm just wondering; I don't know what my colleagues feel about this—of an emergency order at 2 in the morning, I'm wondering if there shouldn't be consideration given to what you suggest is that marginally lower test but still a standard of "reasonable and probable grounds to believe that." People get busted on that basis, don't they, and held in custody? So I'm just wondering why the drafters didn't put "reasonable and probable grounds" for section 4, understanding full well why they put "balance of probabilities" in section 3.

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Ms Predko: In response to that I would say that in the situation in section 4 you actually only have evidence from one side, so it should actually be easier to prove on a balance of probabilities because you don't have the other side at all. You've only got one side of the—

Mr Kormos: Oh, I understand that part. Subsection 4(2), because the bill contemplates going at 2, 3 or 4 in the morning, really makes me crazy, because on an emergency order application at 2 in the morning a victim has to provide, because it says, "shall contain a summary of all previous and current court proceedings and orders affecting the applicant and respondent including all applications and orders under this act." Holy zonkers. I'm not aware of any section that gives the court, the judge or JP, the power to dispense with that. It says "shall." Shouldn't there at least be the power to dispense with that by a JP or whoever the court is composed of? Go ahead.

Mr Tilson: Isn't it—and you're right, this is an *ex parte* proceeding—fairer that the applicant should reveal everything they know about the proceedings, past and present, to the best of their knowledge?

Mr Kormos: I agree but—

Mr Tilson: If they make it up, they're going to be in doo-doo trouble because they're saying—

Mr Kormos: Oh, I'm getting to that silly section in a minute. But to be fair, Parliamentary Assistant, it says "shall," with no relief from requiring to produce it.

Mr Tilson: We're talking about a very serious matter, this proceeding *ex parte*, and I would hope that the judge or justice would have as much information before him or her as possible.

Mr Kormos: So if I'm a woman who has just been threatened by some crazy partner of mine, and I am rattled and shaken to begin with, and I don't provide all of that, because it says "shall," is that what my abuser is going to use as grounds to set aside that emergency order? I'm raising it; we will talk about this more, but I'm concerned about it. I'm concerned that it says "shall" because of the nature of the emergency order, which gets me around to section 16.

This is the sort of stuff the Red Tape Commission would include in one of their omnibus bills repealing, isn't it? It's redundant, isn't it? Perjury and public mischief are offences under the Criminal Code, as I recall. Section 16, why is it in this bill? Does it do anything for the bill?

Mr Tilson: It's a very serious matter indeed: tell the truth. You better tell the truth. You better not make up things or you're going to be in big trouble with the court.

Mr Kormos: I always tell the truth, Mr Tilson. But does it do anything for the bill?

Ms Predko: It sends a clear message. I think beyond that, as you say, its content is already existing in law.

Mr Kormos: Let's make this clear, because you referred to section 127, and I want to thank ministry staff for providing me with a copy of the briefing notes for their minister, or the parliamentary assistant, his briefing notes to section 127. I want to assure them I shared them with Mr Tilson because I didn't have my code—I don't have a Criminal Code—with me.

If somebody breaches it, they can either be prosecuted under section 127 of the Criminal Code, "breach of a court order," that general section—if I recall, some

lawyers have told me that there has been some case law around that in terms of what is and isn't included in court orders. I can't recall those conversations, but I've been told that.

When you say the police shall enforce this, the problem a whole lot of my constituents have had historically is that they've got a family court order, a Unified Family Court order or a Supreme Court order in a divorce, and the police are very nervous. No disrespect—they're just very nervous. Their line is, "It's a civil matter," or, "Call your lawyer in the morning." The police basically know the Criminal Code and that's the focus of their work.

What's going to go on to make these orders more enforceable than the Unified Family Court, the Family Court, provincial division, and the Supreme Court or various Superior Court orders that police have been nervous about enforcing? Not in terms of busting somebody who violates them—or I suppose they could be charged under the Provincial Offences Act too, couldn't they?

Ms Predko: They could not be charged under the Provincial Offences Act the way this act is structured.

Mr Kormos: I thought at least they could be charged, that they could be given a provincial offence ticket; I was hoping, at least.

What I'm worried about is in terms of the enforcement. You're aware of the circumstances I'm talking about, right? The guy's there—I say "guy"; it usually is—and the police are saying, "Whoa, we don't see any blood dripping. This is a civil matter. Call your lawyers." What's going to change that with this act?

Ms Predko: If we turn to subsection 4(7) of the bill—

The Chair: You have about 30 seconds to answer the question.

Ms Predko: At subsection 4(7) of the bill we see, "An emergency intervention order prevails over any order made under the Children's Law Reform Act." Part of the difficulty for police officers when they attend at a scene now is that they are not clear which order prevails. That is a very common concern that police officers have, as well as the wording of the order. Those two things are addressed directly by this bill, first by the specific wording contained in subsection 3(2), and also by this subsection 4(7) which would make the order prevail.

The Chair: We'll go to the government side.

Mr Tilson: So I'm clear, each caucus will still have half an hour to either make a presentation or comments about the bill?

The Chair: Yes. Actually you have just a little under half an hour. You now have 15 minutes, and then we go back. We're going in 15-minute rotations, except that for the last half-hour I'm going to narrow it down a little bit because we need time to get up to vote.

Mr Tilson: The last point Mr Kormos raised was one I had intended to ask about and you may wish to elaborate. We all hear, as Mr Kormos has indicated, that police arrive at the scene and they groan, they literally groan, about getting involved in these matters. One of the reasons they groan, just as you've indicated, is because of the contradictory court orders, because of a restraining order and child access. It's conceivable that those two

orders could conflict, as I understand it, for example, and there may be others you may wish to comment on.

You have now answered that. Subsection 4(7), "An emergency intervention order prevails over any order made under the Children's Law Reform Act, the Divorce Act (Canada) or the Family Law Act against or affecting the applicant or respondent or any child." Maybe you can tell me what sort of consultations you've had with the police or the police organizations on this topic, continuing on from the part that was raised by Mr Kormos.

Ms Predko: Certainly. The task group on restraining orders, which was convened by the Attorney General in September 1999, first of all had a stakeholder relations meeting with the police officers in, I believe, January or February 2000. That would have been a first opportunity for police officers to give some feedback in terms of the perceived problems with the existing restraining order system.

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There was then an advance meeting with police officers in June of this year on recommendations that new civil domestic violence legislation be an option for the government to proceed with. There was further confidential consultation with some police services in September of this year to provide some feedback in terms of the proposed direction of this bill. We certainly expect that as regulations under the bill, if passed, are developed, the police will be a very important stakeholder group to be involved in the development of those regulations, particularly in the areas where the bill impacts upon municipal police services and the OPP.

Mr Tilson: I have one other question. Presentations have been made, particularly by the government members in the House, with respect to the speed of dealing with issues. Perhaps a summary of comparison between restraining orders and intervention orders—in other words, under the current regime as opposed to the regime that's being proposed by this bill, for one, essentially now there's 24-hour service. Perhaps you can elaborate on that.

Ms Predko: I can give an overview now. The other possibility would be that I could ask staff to prepare a chart that would give committee members a comparison between the existing system and the proposed system. I wouldn't have that available today, but I can briefly give you an overview of the main differences if you would like.

Mr Tilson: That would probably be very useful. A chart would be useful, but perhaps you could comment on some of the items. That would be helpful, but a chart would be very helpful.

Ms Predko: In terms of the existing system, as I mentioned in my overall technical briefing, there are no existing criteria for granting a restraining order. What flows from that, and maybe wasn't specifically clear, is there is no existing definition of "domestic violence" in legislation in Ontario. This definition that's been put forward in the proposed Domestic Violence Protection Act would be our first definition of "domestic violence."

The other main difference is that people in a much broader category of relationships could apply for intervention orders than can currently apply for restraining orders under the existing legislative regime. So persons who are in dating relationships, for example, and persons who are related and reside in the same household can apply for intervention orders.

I would like to point out that in the situation of Arlene May and Randy Iles, they would not have qualified for a restraining order under our existing legislative framework. As well, the addition of family members residing in the same household has the possibility of allowing persons who are subjected to elder abuse to be protected by these intervention orders.

In terms of timelines, which you had pointed out in your comments, one of the main differences is that now, of course, you have to apply during regular court hours, and in some locations in the province regular court hours are not even every day of the week. In the north or in small locations, the fact that a process will be available 24 hours a day, seven days a week, will mean an enhancement of service, particularly to those remote areas. Currently you can apply for a restraining order on an ex parte basis, but you have to do it directly in writing to the court and the court has to be available and open to receive your application. So this is a significant enhancement of service to areas of the province that don't have a court open at all times.

Those are the main differences. Of course, subsection 3(2) sets out the specific items that can be prohibited. At this point in time we have no limitation on what can be prohibited by the restraining order provisions of the existing legislation. We just have those words "annoy," "molest," "harass." It would be a significant enhancement for police stakeholders to be able to more clearly see what activity is being prohibited.

Mr Joseph Spina (Brampton Centre): I think you got into some of the answer to the question I was about to ask. It was around the applicants in section 2, where you indicated that this act broadens the base of the applicant. I guess it's not just a female spouse or a child but also includes an elderly person who may or may not be related. They could just be a cohabitant of the household, could they not?

Ms Predko: Actually, if we turn back to the definitions section, "cohabit" is defined to mean "to live together in a conjugal relationship, whether within or outside marriage."

Mr Kormos: It's conjugal, Joe.

Ms Predko: In terms of when we say people are cohabiting, we actually mean people who are cohabiting in an intimate or sexual relationship. From a policy perspective, we were concerned about capturing roommates in terms of this proposal.

Mr Spina: And that's gender-neutral?

Ms Predko: This definition is completely gender-neutral.

Mr Spina: So it could be two women or two men?

Ms Predko: Certainly.

Mr Spina: The other element I want to clarify is in section 3, where it talks about cohabiting for any period of time. Respecting what you indicated by "conjugal," I'm just wondering, is that too loose or is that covered by other legislation in defining "cohabitation"? I'm thinking of a couple, of whatever type, who spend a weekend together and then an abusive situation results. Is that considered to be cohabitation? I'm just trying to clarify that.

Mr Kormos: It's too bad Mr Vankoughnet isn't still in your caucus. He could be helpful with that.

Ms Predko: It's a continuation along a spectrum of relationships. I think what you've just described would fit either within the concept of the people dating or cohabiting for any period of time. With dating being included, it really isn't a distinction you necessarily have to draw when the cohabitation periods are very short.

Mrs Elliott: You mentioned, I think, the joint committee on domestic violence in your opening remarks, and you also mentioned that you had looked at other jurisdictions and the legislation they have in place. I'm curious to know how the legislation before us is different than the legislation you've reviewed from other jurisdictions.

Ms Predko: There are some distinctions between Canadian legislation and foreign legislation because of our constitutional prerogatives in Canada, where the federal head of power includes all criminal law power. For example, in New Jersey, which is an American statute I've examined quite closely, the state is capable of enacting criminal powers. So they have a much easier time making a bill that covers the criminal and the civil spectrum. Because of our Constitution, it's a little more difficult, so I'm going to restrict my remarks mainly to the differences between this and other Canadian pieces of legislation, because the foreign ones are quite different.

The main differences, I think, are that in section 2 we include persons who are or were in dating relationships. There is a definition of "intimate partners" in the Yukon's legislation, but it is a circular kind of definition and was not of assistance. The dating relationship, I would argue, is more broad than that and is included here.

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In terms of the definition of domestic violence, our definition is different from the other jurisdictions, because the violence could have occurred against "an applicant, an applicant's relative or any child." I believe that's also true in Prince Edward Island, but in the other Canadian jurisdictions the violence must have happened directly against the applicant. This difference is because much of what is domestic violence does occur in a continuum family setting where threats are made against children. There can be threats made against things that are not people, like pets, for example, and we think this captures the continuum in a more effective way.

Another difference in our definition of domestic violence is causing the applicant "to fear for his or her safety." In consultation with some advocates for victims, we were trying to capture the essence of the activity. For

example, if we look at paragraph 3 of subsection 1(2), "an act or omission or threatened act or omission that causes the applicant to fear for his or her safety," many of the other jurisdictions say here, "an act or omission or threatened act or omission that would cause bodily harm or damage to property." That may be overly broad in the sense that there may be acts or omissions that would cause damage to property that wouldn't necessarily cause people to fear for their safety. So that's a way our definition is different.

In terms of the process, we have the shortest period of time and a stagnant period of time during which a person is entitled to a hearing. Most of the other jurisdictions have a process whereby a Superior Court judge reviews the order within a short period of time but the respondent is not given any opportunity to provide evidence or be heard. Then the respondent would have to make an application after confirmation to have the order changed or set aside. This is a best practice from our perspective. We've consolidated what's happening in Alberta, Saskatchewan and Manitoba into what we think is a workable best practice for Ontario. So in that way it is different than their legislation.

Mr Bryant: I have 15 minutes, is that right, Madam Chair?

The Chair: You've got until 5 o'clock.

Mr Bryant: Thank you for coming. Let me deal with some technical questions first. You mentioned in your remarks that two other provinces—I think you said Saskatchewan and Alberta—use Criminal Code provisions to enforce actions that this act addresses itself to. Have I got that right?

Ms Predko: Yes. They have specialized domestic violence legislation much like this. In three of the five provinces they have no offence provision and rely on section 127 of the Criminal Code.

Mr Bryant: To your knowledge, in those provinces they haven't adopted provincial legislation because the Criminal Code covers it already?

Ms Predko: I'm not sure I understand the question. From my discussion with their policy counsel, I think they made a decision that they wanted criminal enforcement of their specialized domestic violence legislation, as we do. In making that decision they decided, because of the way section 127 of the code is drafted—maybe it's helpful if we make reference to that for a second.

Section 127 of the code is entitled "Disobeying Order of Court.

"Everyone who, without lawful excuse, disobeys a lawful order made by a court of justice or by a person or body of persons authorized by any act to make or give the order, other than an order for the payment of money, is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of an indictable offence and liable to imprisonment for a term not exceeding two years."

Mr Bryant: That is what provision in what act?

Ms Predko: That's section 127 of the Criminal Code. You'll see that part of this is "unless a punishment or

other mode of proceeding is expressly provided by law," other than contempt, I might add. By not providing an expressed other mode of proceeding in law, you are able to use this section of the Criminal Code, and that's the approach that's been taken in the other three provinces and the approach that we're proposing to take in Ontario.

Mr Bryant: If this has been covered already, just tell me, but I don't think it has. The bill before us now permits seizure of weapons. This type of provision is already available to judges when they set bail conditions under the Criminal Code, isn't that right?

Ms Predko: That's correct.

Mr Bryant: I'm just taking this from Mr Martiniuk's speech of October 3. He's discussing what the bill does. He talks about other terms of the order. Before I get to that, the new act permits the removal of the abuser from the home. That's also already available under the Criminal Code, is that right?

Ms Predko: If there's a criminal charge.

Mr Bryant: So the answer is yes.

Ms Kuras: If there's a criminal charge.

Mr Bryant: The other terms that could be found I guess in intervention orders, and again I'm just going through the list from Mr Martiniuk—"Requiring the ... abuser to vacate the residence." Could this be required by a judge today, before this act is passed?

Ms Predko: By a Family Court judge, a person can get exclusive possession of the matrimonial home if they are a married spouse, which means they qualify under part I of the Family Law Act. This would be available to all of the persons who are listed in section 2, all the potential applicants, which is much broader than a married spouse.

Mr Bryant: "Requiring that police are present while the ... abuser removes personal possessions." Is that not already either a matter of policy or a matter of course under these orders? Could a judge make that order right now, before this bill is passed?

Ms Predko: No, actually they could not. Police as a matter of practice in some jurisdictions will attend to keep the peace; in other jurisdictions they will not. So in order to ensure that everyone is entitled to the same service—

Mr Bryant: So you're saying there are different police practices on this?

Ms Predko: That's correct.

Mr Bryant: Do you happen to know what they do in Toronto?

Ms Predko: In Toronto? I didn't practise in Toronto so I don't know.

Mr Bryant: Fair enough.

Mr Tilson: Where's that?

Mr Bryant: Strike that from the record.

"Ordering counselling for the abusive partner to help prevent further violence." That's an order that can be part of a sentence right now under the Criminal Code, can't it?

Ms Predko: Under the Criminal Code, but these orders can exist without there ever being a criminal charge.

Mr Bryant: Sure, I understand.

Ms Predko: So yes, under the Criminal Code such an order could be put in place.

Mr Bryant: This counselling that's being provided to the abusive partner, I understand it's going to be a court order under this new act. Are additional funds being dedicated? Maybe this is a question for Mr Tilson, or maybe it's a question for Ms Kuras, as the executive lead on victims' services. Is there some anticipation that there are going to be increased orders and therefore more resources needed for the counselling of the abusive partner?

1650

Ms Kuras: Obviously we'll have to look at whether or not increased resources are required, but currently abusive partners do attend counselling sessions as part of probation orders, for example under the PAR program. We would be tracking this to see whether or not additional resources would be required, depending on how often these types of orders might be made. It's difficult to say.

Mr Bryant: It sounded like they're required to get that counselling under their probation orders. Is that right?

Ms Kuras: Correct.

Mr Bryant: "Requiring that the ... abuser give up possession of firearms and weapons that have been used, or threatened to be used, to commit domestic violence." Again, that's an order that probably routinely would be given, but certainly could be given under a Criminal Code offence right now.

Ms Kuras: Again, to be specific, not at the home and not at the time. There are specific provisions for firearms seizure under other provincial statutes; for example, with respect to hunting and those sorts of things. But no, this is not something that would be available today unless there was—

Mr Bryant: A Criminal Code offence. OK.

Next, and again this is Mr Martiniuk's list, "ordering counselling for the children at the alleged abuser's expense, to help them overcome the effects of exposure to the violence." This is what the intervention order will do. How is this going to be enforced against, to put it bluntly, deadbeats if in fact there are no monies forthcoming? We're talking here often about people, as you know very well, who have been ignoring civil and criminal orders, restraining orders, and now they're being told to pay for counselling and they won't. So how is that going to be enforced against them?

Ms Kuras: That question was asked earlier and we'll just expand our information search to include not only "unable" but "unwilling."

Mr Bryant: I think the question, if it was from Dr Bountogianni, was—

Ms Kuras: If they can't pay, and you are asking if they won't pay.

Mr Bryant: Right. So right now the Ministry of the Attorney General is not committing new resources in anticipation of the additional counselling remedies that are being provided under this act?

Ms Kuras: The additional resource requirements will have to be looked at. There are none at this time.

Mr Bryant: I'm going to take "There are none at this time" as right.

"Granting exclusive possession of the residence to the victim or exclusive use of certain property such as credit cards and bank accounts." Who's going to do that? I'll tell you what I'm thinking of. I always think of the Family Responsibility Office. Orders are often made, but who's going to make sure that they're enforced? Is the Ministry of the Attorney General going to put crowns or other people in charge of ensuring that this order is followed through? Because again, we're not talking about the most co-operative people in the world when we talk about the abusive partners.

Ms Predko: One of the things about a civil order is that they are for the most part self-enforced, which means that when you get an order in the Family Court, for the most part they're enforced by the person who obtained the order. In this situation, the act makes provision for the respondent to either post a bond or enter into a recognizance. If he or she can post a monetary bond, then that would provide funding that could, for example, pay for the counselling service, if that's the situation, or could deal with the exclusive use of the property.

I think what's going to happen here is that this is an order that can then be shown to other persons who might deal with the property and it will be an order that would give them notice of the applicant's interest in the property. If it's a situation where he's restrained from dealing with a particular property, it could be registered on title, for example, or if it's a situation where she's been given exclusive use of something, it would be something that could be shown to police officers. It's quite a common reaction in a domestic violence situation, for example, if he or she is the registered owner of a vehicle, to phone the police and report the vehicle stolen. It's to address that type of behaviour and it's to show persons in authority or persons who might be dealing with the property who has the power to deal with the property or the exclusive use of the property.

This type of order is quite common now, under the Family Law Act, in terms of the contents of the matrimonial home. It's possible now in law between married spouses to make this type of order.

Mr Bryant: So basically it's up to the victim to enforce the order. The Attorney General is not, through this act or otherwise, going to be enforcing the order for the victim. It's up to the victim to enforce this order.

Ms Predko: I don't think that's what I answered.

Mr Bryant: That's what I'm saying. Do you disagree with me?

Ms Predko: I don't think I'm in the position to answer that question.

Mr Bryant: So you don't deny it then.

The Chair: She said she's not in a position to answer that question, sir.

Mr Bryant: Chair, I'm just asking the question and she answered, I thought—

The Chair: And she's answered it.

Mr Bryant: Chair, why are you getting involved?

The Chair: She has answered the question.

Mr Tilson: Let me put it this way: I don't think it's appropriate to cross-examine the witness. She gave an answer which, hopefully, will answer your question. It's as simple as that. If you don't like the answer, that's the way it goes. She's given an answer and I think it's an appropriate answer.

Mr Bryant: I was just waiting for her to finish her answer. I didn't think that she had finished her answer, but the Chair and Mr Tilson will probably continue to have advice for me on my questioning. I'll keep on asking them.

The Chair: Mr Kormos?

Mr Kormos: Have you had a chance to read some of the written submissions we've received?

Ms Predko: I haven't had an opportunity to do so, Mr Kormos.

Mr Kormos: Some pretty wild stuff in there. There's some people who clearly shouldn't have access to e-mail. There's some real—

Ms Predko: I'm hoping I'll be given them so that I'll have the opportunity to read them.

Mr Kormos: You don't have to read all of all of them because, trust me, the highlighted comments will warn you about the authors.

Parliamentary Assistant, I appreciate the effort here. You talk about the regional disparity from community to community, police force to police force, for instance, in terms of police attending to keep the peace and the degree to which they'll become active. Let's talk about women as victims of domestic violence. My concern is that women aren't going to be treated equally across Ontario with this bill. Is that a fair concern on my part?

Ms Predko: Why do you have that concern?

Mr Kormos: I'll tell you why. Because in August I visited at Attawapiskat and Peawanuk on the James Bay-Hudson Bay coast, the community of Ogoki, which is inland, along with several other of the isolated native communities. They don't have justices of the peace. I spoke with the native police services in those communities and they very specifically talked about their frustration, the police officers', in dealing with, among other things, domestic violence. These cops can't even get arrest warrants because they don't have access to a JP. So I'm really concerned about accessing. I appreciate you've got section 13 in here; that's the designation of JPs who are going to do 24-hour duty, and judges as well as JPs.

As part of the drafting team, have you included any recommendations to the ministry about needing to beef up the whole JP and judge complement if we're going to give fair and equitable access to this legislation? Let's talk to the people in Ogoki or Peawanuk or Attawapiskat.

Mr Tilson: My understanding is that the Attorney General's office will provide whatever resources are necessary to make the bill work. I also understand, which I hope the two witnesses before us, or the two people from the ministry, would elaborate, the continuation of the telewarrant process that is being done now. You don't have to go as far north as you're talking about to hear of situations—and obviously that is an approach which the Attorney General wishes to proceed with under this bill.

Perhaps the witnesses—I keep calling you witnesses—the representatives from the ministry could elaborate on that point.

1700

Ms Predko: Certainly.

Mr Kormos: Even though it's my time, it's his question. Sure, by all means. I just didn't want him to think I didn't realize.

Mr Tilson: Just making sure you're awake, Mr Kormos.

Mr Kormos: Go ahead.

Ms Predko: It's anticipated that, as it says in the bill, certain JPs or judges would be designated to hear these on a 24-hour, seven-day-a-week basis. Currently in Ontario, justices of the peace are available on a 24-7 basis through the Telewarrant Centre, which is the centralized facility connection that's available to police officers by use of telephone and fax.

That is certainly a model that is used in other jurisdictions in this country where they have a centralized, specialized panel that deals with these applications so that police in all locations would be able to go to the centralized panel to get a hearing of an application for—in those jurisdictions it would be called a protection order; in our jurisdiction it would be called an intervention order. So it would be anticipated that it wouldn't be having to go to local JP resources or local court resources in an after-hours situation.

Mr Kormos: But I don't understand. If I'm the applicant, I'm a woman who's just had my partner, husband, boyfriend, what have you kick the door in, I'm the one who has to make the application, I'm the one who's fearful at 2 in the morning—it's one thing in Welland to say the police officer's going to take you down to the police station, which might be one of the places where the 24-hour-a-day JP is going to conduct hearings. I've been to the police stations in these communities too; they're worlds removed from what we regard as an urban police station. How does the individual access that, as compared to—I understand what you're saying about police officers, through the technical support they have in police stations, how they utilize. How does the individual, how does Jane Doe, if I may, access that on her own? Because some of these communities don't have police either.

Ms Predko: It's not anticipated, under the current structure of this bill, that people would have direct contact with justice of the peace resources without some facilitation through police services.

Mr Kormos: OK. This is something new. Have we heard this before? Go ahead.

Ms Predko: Obviously in the north there would need to be another strategy if there are not police services available. I want to point out as well that the Aboriginal Healing and Wellness Strategy is aimed at addressing domestic violence, among other issues, and that certainly this would need to be done in conjunction with, consultation with, the aboriginal community. It's not our intention to just impose a bill and say, "Here, this is something that would work for your community." It's certainly something that would need to work through the Aboriginal Healing and Wellness Strategy. So to answer your earlier question about the small, remote locations, I think there would need to be a strategy, and one of the regulation-making powers under the bill is that different regulations can be put in place for different areas of the province, and that's because it's anticipated that there would need to be a strategy developed for the north.

Mr Kormos: I've got another problem down where I live, down in Niagara Centre. You've got to bear with me for a couple of minutes, because I've got to explain it, right? As a matter of fact, it was in 1999. Honest, Chair. It was during the provincial election, another constituent. I get a phone call, and I know this woman. I know her parents, her family, her husband, her kids. This isn't domestic violence; this is a neighbour dispute. It will probably speak to the application of this bill and why it's restricted to domestic violence, because neighbour violence can be very volatile too and very difficult for police to deal with. My goodness, they hate those, the spiked fences. We've all had to deal with those in our ridings.

This woman has a neighbour who may or may not have threatened her in terms of what the Criminal Code requires for a charge of threatening. The police don't lay a charge. I talk to the staff sergeant. When he explains to me why the police didn't lay a charge, with what little bit I know and the experience I've had, I'm inclined to say, "You're right, the judge probably wouldn't convict on the threatening sections under the Criminal Code." The police recommend that she go and get a peace bond under the Criminal Code. Is it section 745?

Ms Predko: Section 810.

Mr Kormos: It used to be 745, back before 1988.

Interjection.

Mr Kormos: Time flies, that's right.

The problem is that she goes to a JP and the JP gives her a hard time about hearing the application for a peace bond. Again, I don't know a whole lot about procedure but I recall that although the judicial discretion is precisely that discretion, the obligation of the JP to hear you out, to determine whether or not there are reasonable or probable grounds and to sign the information, is not discretionary. You know what I'm saying, Chair?

The Chair: Yes, I do.

Mr Kormos: So in the midst of the election—I've got a few things going on—I say, "No problem, we'll go over to 3 Cross Street in Welland," where the JPs hold their office. Here's this JP and I go in with my constituent and I say, "Whoa." The JP has problems deciding

whether or not she's going to turn her tape recorder on. She doesn't have a clear understanding of the fact that these proceedings are supposed to be recorded. You'll like this story, Ms Mushinski.

The Chair: Would you please refer to me as the Chair.

Mr Kormos: The Chair. The Chair, Ms Mushinski, will like this story.

The justice of the peace has problems deciding whether she should record it. I say, "Please, JP, you've got to record this." She's not a new JP, she was appointed before 1990, if you get what I mean, between 1987 and 1990. I've known this woman for a long time through her political activity with the local Liberal organization. Wait, hold on. I'm going to get to that.

I've encountered some excellent justices of the peace. I've known—we've been blessed in Niagara—some very good ones. We've got a couple of dogs thrown in there. The political patronage appointments have ended up being real dogs. I'm there with the JP explaining to her very patiently that this woman has a crisis. The JP at first misunderstood where the woman lived and tried to suggest she perhaps lived in a bad part of town and maybe she should consider moving out that part of town to get rid of her neighbour. It's a part of town I happen to have grown up in, of all things. I explained to the JP, "No, Your Worship, she lives on the other side of the canal." "Oh."

Sure enough, I had to leave, and by the time all was said and done, the JP had sat there and, using her position, convinced the woman not to lay the peace bond information. Incredibly frustrating: I spent 30 minutes there with this constituent. Basically what we've got is a bad JP, an incompetent one; not the norm, but an incompetent one. Her name is Meg Belcastro. As I say, Chair, you might enjoy this story. She's an incredibly incompetent JP who shouldn't be sitting, who is not receiving adequate supervision and who is certainly not receiving adequate training, and if she is, she hasn't the aptitude or the ability to internalize the training.

What has the Ministry of the Attorney General got in mind? We've already got a lot of concerns about training for crown attorneys, police and judges around the issue of domestic violence and dealing with those, and we've seen a remarkable transition in the response of the courts. What has the AG got planned for justices of the peace, many of whom are very good, some of whom are not? What has the Ministry of the Attorney General got in mind for training of justices of the peace to have them deal with this very new area of law and some incredible new powers being granted to justices of the peace?

Mr Tilson: Designated justices of the peace.

Mr Kormos: Yes, for the ones who are selected or appointed.

The Chair: You have about two minutes to answer that question.

1710

Ms Predko: As we explained when we were technically reviewing the bill, if the bill is passed, we anti-

pate that only a certain number of JPs and provincial court judges would be designated to hear applications. We've been reviewing best practices in other jurisdictions, and in particular Saskatchewan and Alberta rely on specialized panels. In having a specialized panel it is much easier to deliver training, and as I'm sure you're aware, training of judicial officers is within their jurisdiction.

Mr Kormos: Their own bailiwick.

Ms Predko: That's correct. The Ministry of the Attorney General provides training material and educational material for use by the judiciary and by justices of the peace. We would provide educational material to the bar as well and hope that they could play an educative function in their interaction with judicial officers.

Mr Kormos: Have you any initial material? None of that stuff is prepared yet?

Ms Predko: What material?

Mr Kormos: The materials you'd provide for training of justices of the peace, judges, members of the bar.

Ms Predko: No. The process would be that if the act is passed, then we'll need to develop regulations and the content of the regulations would be the meat and potatoes of any education or training material that you would provide to those groups.

The Chair: Thank you, Mr Kormos. Mrs Molinari?

Mrs Tina R. Molinari (Thornhill): I understand that there's a broader range of relationships covered in this act and that it's the first Canadian jurisdiction with such expansive coverage. There are a couple I did not see covered in the definition, being those who are living together and "cohabit" means "conjugal relationship." Is there somewhere else where roommates would be covered, where there are two people living together who are not related or are not living together in a conjugal relationship, but there is a form of violence expressed? Are they covered in any other area?

Ms Predko: They are not covered by the statute. They certainly have other remedies available to them: all the Criminal Code protections as well as an application for a peace bond under section 810 of the Criminal Code.

One of the difficult policy decisions is that when you're examining something and calling it "domestic violence," there are a lot of mandatory standards that apply to police services and a lot of internal police service policy that relies upon a definition of "domestic violence" in terms of the relationships between the parties. For example, some police services require that a domestic incident be identified by communications and then they follow a different procedure. To include roommates within the parties covered by the bill would likely lead to some confusion between the application of this bill and the definition of "domestic violence" used by police services in responding to these types of incidents.

Mrs Molinari: My next question is the age restriction. "A person must be at least 16 years old to apply for, or be the respondent to an application for, an intervention order or an emergency intervention order."

Ms Predko: And your question is why the age restriction?

Mrs Molinari: Yes.

Ms Predko: If the victim of domestic violence is under the age of 16 years, they would be within the ambit of the Child and Family Services Act, which is the primary method of protecting children within the province of Ontario from violence and abuse, so in consultation with the Ministry of Community and Social Services, not wanting there to be confusion and overlap between these two pieces of legislation, the age of 16 years was chosen in terms of applicants.

In terms of respondents, again it's a situation where we don't want to impact on a family situation and have a child removed from a home when they're under the age of 16 years because they are perpetrating violence. It should be a situation that would either come under child protection or another method of proceeding. We don't want to interfere in the lives of children who would come within the coverage of the Child and Family Services Act.

Mrs Molinari: The reason I ask is, where they are covered then, is it as extensive? This is a good piece of legislation that covers a wide range of protection for victims. What I'm looking for is comparable legislation and you're telling me there is something in place that would protect under-16s. Is it as forceful as this?

Ms Predko: I don't want to give you an opinion about what I think is the coverage of the Child and Family Services Act. It's different. The Child and Family Services Act, under section 37, defines a child in need of protection, and the method of defining a child in need of protection is structured differently than this is structured in this act. I can tell you truthfully that an assault against a child under the age of 16 years is still allowed in Ontario law and an assault against an adult person in the context of this act would be domestic violence. There are differences between the treatment of young people under 16 and people over 16 within the context of this act.

Mrs Elliott: My colleagues across the way were making some comments earlier about counselling programs and the types of programs that are available. I think it's important to have on the record that there is an existing program in place; in fact it was established under our government. It was formerly called the male batterers' program. It's now called the partner assault response program. In addition to that, \$21 million is now invested in over 100 counselling programs for both women and children. Some \$50 million dollars is presently being expended on community-based projects under the title of the victims' justice action plan.

An additional \$10 million is underway now, divided into two, \$5 million being focused on children who have witnessed violence and an additional \$5 million being funnelled toward transitional programs for women who have experienced domestic violence. By my numbers, we're now up to a total of well over \$100 million being invested in what's commonly called the VCARS program, which is the victim crisis assistance and referral

service. That's \$10 million annually invested in that program, and under our government the number of sites where those services are offered—certainly we have one of those in my own community of Guelph-Wellington—has been expanded by 50% and there are now over 26 sites.

Mr Tilson: Attorney General Flaherty has indicated he has made a number of requests to the federal government with respect to protecting victims of domestic violence. Can you tell us what some of those requests have been?

Ms Predko: Certainly. The requests are basically threefold. The first is to create a specific offence for breach of a provincial intervention order or a protection order, such as we're discussing with this bill. The reason that request was made was because it would be much easier to track breaches of these orders through the system if there was a specific offence for breach of a restraining provision.

The second request that's been made of the federal government is to reverse the onus on a bail situation where the person has committed domestic violence or where they've breached a restraining order. The reason here is that in some of the critical incidents we've witnessed over the past six or eight months, the parties were out on bail, even in a situation where the crown attorney in a particular case had opposed bail at a bail hearing.

The third situation that the Attorney General has asked the federal government for a response on is either a simplification or a clarification about section 810, peace bonds, to make them a more effective remedy for victims of domestic violence and victims in the situation that this member spoke about up here. Currently peace bonds are done by practice in most of the provinces on notice to the person who is alleged to have breached the peace, and they take a number of months to process. If that process was clarified and either made on a without-notice process or in a process where there was an expedited hearing, then it would be easier to get an 810 peace bond and involve the criminal system in a situation that might not be domestic violence but certainly would be neighbour problems or a roommate problem.

Those are the three main requests that the Attorney General has made to the federal Minister of Justice.

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The Chair: Any further questions from the government side? You have about five more minutes.

Mrs Molinari: With respect to restraining orders, can you tell me how many restraining orders are currently in Ontario and how many are breached?

Ms Predko: Each year, there are about 1,500 to 2,000 new restraining orders added to the system, and at any one time on the CPIC system, which is the Canada-wide police information system, there is—I'm not totally certain on this number, but I believe there are around 10,000 to 12,000 on CPIC for Ontario at any given time.

In the past few years, we've averaged around 200 charges for breach of restraining order on an annual

basis. We believe the reason that number is so low is because police officers are uncomfortable with laying that charge. It's an incredibly low number if you think about the number that are outstanding on the CPIC system. Certainly, when police describe their experience, they seem to be attending where there's been a breach.

The other alternative that happens, and it will continue to happen, is that if the breach involves a criminal offence, the police will decide to lay a criminal charge. That would continue to be the case.

I've just had a note passed to me. It's 5,000 to 6,000 restraining orders on the CPIC system at this time.

Mrs Molinari: What are the current penalties for restraining orders?

Ms Predko: For a first breach of a restraining order, the penalty is up to three months in jail or \$5,000 in fine or both. Normally what we see in terms of the system when we review the statistics is a fine in the neighbourhood of \$265 to \$300. We don't actually see a lot of time in incarceration. For a second restraining order breach, the punishment can be as high as two years in jail or \$10,000 in fine or both.

Mrs Molinari: So those are the current ones?

Ms Predko: Those are the current ones under the Provincial Offences Act. But the limitations are actually defined within the statutes that define the restraining orders, so it's defined in section 35 of the Children's Law Reform Act and section 46 of the Family Law Act.

Mrs Molinari: Will this increase the penalties?

Ms Predko: The penalty for breach of section 127 of the Criminal Code is up to two years in jail, so it's the same, but it takes away the possibility of a fine as an outcome. A current outcome quite commonly is a fine, and of course it would lead to a criminal record for the person who is convicted.

Mrs Elliott: I asked you earlier about how this legislation varied from legislation in other jurisdictions, and you pointed out a number of those things. I'm curious to know if the legislation in other jurisdictions, particularly the Canadian jurisdictions, has been evaluated, and if you have a sense of how well that's been working to actually address the issues since those pieces of legislation have been in place.

Ms Predko: There have been two evaluations of the legislation in the province of Saskatchewan, one about six months after implementation, and another, I believe, three to four years after implementation. In both evaluations, the results were quite positive in terms of victim feedback and police feedback about the effectiveness of these orders.

One of the things they did notice, though—and I didn't get to finish my answer to you earlier—was that certain provisions of the Saskatchewan legislation—one is a warrant of entry—were not being utilized at all. That type of warrant of entry, which allowed the police to enter a place where they thought a victim might be and try to make contact with the victim, those provisions have not been reproduced in our bill because the result of

the Saskatchewan evaluations was that they were not being utilized.

Alberta has a process where they've evaluated their legislation. They have not yet made public the results of that evaluation but we expect it in the next month or so. We're hopeful that their evaluation process, which will be at the one-year mark for the implementation of their legislation, will be able to provide some additional feedback to us in terms of the best approach to implementation.

The Acting Chair (Mr Joseph Spina): Mr Bryant, you have about eight minutes, I believe.

Mr Bryant: I probably should direct this to all three ministry officials who are here and I'll let you decide who answers it.

I presume everybody here is aware of Justice Baldwin's report. We refer to it as the Baldwin report in the vernacular, but it's the report to the Attorney General of Ontario by the Joint Committee on Domestic Violence, working on a seamless community. You know about this report.

Ms Predko: Yes, I do.

Mr Bryant: About a year after the report was given to the minister, in July 2000—so it had sat on his desk, so to speak, for 11 months—Justice Baldwin undertook the extraordinary measure of writing to the Attorney General, the Honourable Jim Flaherty. She did two things. She called for a summit on how the justice system deals with domestic violence and she also said in July—this is her quote and it's something that affects the prosecutors, the crown, and your ministry: "I have observed no noticeable change in the manner in which counsel are approaching these difficult cases in the criminal courts in which I preside." So she said we've put together this important report, which itself was to consolidate and assist in the implementation of the Iles inquest—it's a big report; this is just the executive summary—and nearly a year after the report had been tabled, there was no change in the manner in which counsel were approaching these cases. Is there anything in this legislation that addresses itself to that serious concern that directly affects members of your ministry?

Ms Kuras: The concern you're referring to is her comment about her observations in her courtroom?

Mr Bryant: The quote, yes.

Ms Kuras: I think as part of a technical briefing on this legislation it's fair to say that we are hoping this legislation will prompt vigorous prosecution and vigorous enforcement of restraining orders because the process is going to be clearer. It's going to provide an opportunity for us to have some input in developing the regulations in terms of the policies and procedures to ensure that this new legislation is brought into force, if passed, with an understanding on the part of all the players about the roles they will need to play. I would hope that, if passed, this bill will prompt some further steps—it is one step—that need to be taken in the area of domestic violence. On that basis, I would answer your question that I believe this bill, if passed, would actually provide

an opportunity to improve some of the practices and procedures.

Mr Bryant: How? She is talking about the way counsel deal with domestic violence cases. It took up a big part of her report. How does this legislation address that directly?

Ms Kuras: I don't believe legislation can directly address the way counsel conduct themselves as they do their business, certainly not legislation put forward by the Ministry of the Attorney General. Certainly, as a parallel effort, we hope to have significant training available, both for the bar as well as all others involved in ensuring that this restraining order reform works.

1730

Mr Bryant: Here is my concern, so that you understand. She is saying there is a problem in July 2000. You are saying there is nothing in the legislation to address the problem. So I'm asking the ministry—and let's be clear: I support the legislation. It is a first step, as you said. I'm concerned about all the other steps, all the other strategies that are listed in the Baldwin committee report, 16 strategies in all. I'm saying that in July the judge said there's a problem; you said there's nothing in the legislation. This is my opportunity to ask the ministry, what are you doing to correct this very specific concern raised by a judge who authored a very important report on domestic violence? I open it up to all ministry officials.

Ms Kuras: If we were not talking about this specific legislation, I could offer some other information that might help you see that there is some work being done on risk indicator tools. Police forces are going to be implementing a set of adequacy standards in the new year. Part of that is a very significant look at how police services deal with domestic violence incidents, and they will be completing a risk indicator tool which will help crowns assess the potential risk that any particular offender may present in the future. So there are a number of other initiatives which aren't listed as part of this legislation but are part of a larger strategy to deal with domestic violence.

Mr Bryant: I'll tell you my concern, and I probably address this to Mr Tilson more than to counsel. The concern is that we've got all the promises here and we've got the road map. We don't need another summit. I think the judge was trying to be judicial when she said that we need another summit. We've got the road map here.

After nine people died over the course of the summer as a result of domestic violence in Ontario—that we know of, that was reported in the newspaper—the government rose in the House and said—and one can look at the Hansard—"In response to this disaster, here's what we're doing," to which I say, is that it?

One of the things we've heard is, "It's a first step." What I'm doing is giving the ministry an opportunity to say, "Here's what else we're doing to deal with the 16 strategies in the Baldwin committee report." What are you doing other than addressing a tiny component of the problem of domestic violence?

Mr Tilson: If you're asking me, as the parliamentary assistant, I've just recently been appointed, this past week, and have yet to find an office.

Mr Bryant: Fair enough. Perhaps I should address it to the lead counsel on victims' services.

Mr Tilson: In speaking to the Attorney General, I believe, as he has said and as others have said, this is the first step. Obviously we've got a lot of things to do. Domestic violence is a very serious problem and we're going to deal with it.

Mr Bryant: I appreciate that, Mr Tilson. I probably shouldn't have directed it to him.

I have one minute. Let me ask Ms Kuras. You are the executive lead, victims' services. Why is it now 15 months past and the Baldwin committee report has not been fully implemented? You can tell us. You've been working as the executive lead in victims' services. Why hasn't the Baldwin committee report been implemented?

Ms Kuras: There are many aspects of the report that are being worked on, some that have been implemented. I think if you looked at the entire picture, you would see there has been fairly significant movement. The fact that all of them haven't been actually implemented in the way they've been described—well, if you look at the cover, it is a five-year plan. It wasn't intended to be completed in a year. I think there has been significant work done on the expansion of domestic violence courts, and that certainly was an important recommendation. We're improving the specialized police response. I think that perhaps you best consider this as a five-year plan—we are—and I hope you'll continue to see some improvement.

The Acting Chair: Eight minutes, Mr Kormos, please.

Mr Kormos: Thank you for coming here today. I wish we had more time.

I want to apologize. When I made reference to that speaking note on section 127 of the Criminal Code, I saw the open cardboard box, right over here, and of course I gave it to Mr Tilson. I thought it came from the Ministry of the Attorney General because there were multiple copies of these various speaking notes. I saw Ms Molinari reach into the box and get some of them. So I'm wondering, Mr Tilson, if you would table with the committee all materials prepared, for support of members of the committee.

Mr Tilson: I have no intention of giving you my notes.

Mr Kormos: Well, I suppose—

Mr Tilson: I don't mean to be flippant about it. I have notes here that I have prepared, and I think that's an unreasonable question to ask.

Mr Kormos: No, the ones prepared by the ministry.

Mr Tilson: If there are documents that will help us—we've already indicated there's going to be a chart prepared to assist in comparison, and we're prepared to provide whatever information we can make available to you to better understand the bill.

Mr Kormos: Fair enough. No problem. I've read the bill and I won't have to rely upon speaking notes to speak to the bill.

I'm interested because today for the first time you raised this concept that it's presumed that there's going to be police intervention and that police are going to walk this through the system for a victim of domestic violence. That wasn't suggested in any of the debate or introduction by Martiniuk or Flaherty.

Part of the problem we've got down where I come from, on a 24-hour-a-day basis—there are nights in Welland when there are two police officers on duty out there in patrol cars in the city of Welland, which is not as big as Toronto, and a lot of it is a rural community as well. I don't know where our cops, without their resources being addressed as well, are going to have the resources to have a police officer working with an applicant in a process that could take a considerable period of time throughout the course of a shift. I suspect a whole lot of small-town and not-so-small-town Ontario is very much in the same dilemma, especially on a 24-hour-a-day basis.

That then takes us to the problem of legal representation. Again, it was new today when it was suggested for the first time that the police are going to be the advocates, if you will—not the best choice of words but I'm using it for a very specific reason. If the police are going to be called upon to be the advocates in the emergency or interim or as the ex parte applications, I presume that isn't necessarily the case on the permanent one. There it's contemplated that lawyers are going to be involved. I suppose anybody can represent themselves in court, but then we've got the other serious problem of women's access to legal representation.

I heard what Ms Predko said earlier about legal aid funding and a commitment from legal aid, and I'm sorry, but the reality is that just isn't the case. Fewer and fewer lawyers are representing people in matrimonial litigation on legal aid because of the block fee of a maximum, the capping of the fee, in terms of the hours of preparation. I'm told the procedures become so onerous, form after form and so on. Women aren't getting to lawyers. My fear is, are women going to have access to lawyers under section 3, the with-notice intervention order? I suspect not. It's going to be a real problem in a whole lot of the province.

You talk about designating judges and justices of the peace, yet I notice—in some of the briefing materials we got around JPs, federally appointed judges and so on—huge vacancies on the federal appointments. I didn't see whether we received any material yet on the provincial appointments but I know just anecdotally from talking to people—heck, the province had to shut down provincial offences courts this summer, in Hamilton among other places, because of a shortage of justices of the peace. Charge after charge was tossed out in provincial offence courts in both Toronto and the Hamilton area, and it could well have happened in other areas as well. They weren't Criminal Code charges, to be fair, but whole

dockets were tossed out because of a shortage of justices of the peace, among other things. So there are real problems there. Quite frankly, we're going to keep reminding the government of it, hoping to hear some sort of response to those issues in the context of these particular hearings.

1740

The other really troubling thing is that all of this process in Bill 117 happens after the fact and it's reactive. Something has to happen in terms of actual de facto violence or that would permit you to infer that there could be a risk of violence before you access Bill 117. Then you end up with a piece of paper that lets the police do something if something happens yet again. So that comes to the whole issue, and I trust we're going to hear from some of these people during the course of these hearings.

Down where I come from, Women's Place shelter used to provide an extensive level of services for women and kids. It would make Bill 117 far less critical, because if women have safe places to go to and their kids have safe places to go to, if they have support in the community, if they can be in those safe places, they don't need the emergency restraining orders. They can use the traditional court process. Then you don't have the dilemma about police being the advocates at 2 in the morning, or 24-hour-a-day JPs and judges. So one of the concerns that folks down in Niagara have is that this speaks for itself.

I've raised some of the issues about the drafting. Drafting is a difficult exercise, and if it appears that I've been critical of either of you, if you've been in charge of the actual drafting—I appreciate that it probably wasn't a single person making those decisions, it was a committee or group effort, but I'm going to be raising some points about what I see.

It also makes me concerned that we don't have an explanation, for instance, for the exhaustive list under subsection (2) in terms of the definition as merely being including but not limited to.

The "under 16"—what you're saying is that a 15-year-old who's forced into prostitution can't go to a JP and get an order under Bill 117 against her pimp. The fact is there are 15-year-olds in Toronto—I use prostitution as an illustration—with 25-, 30- and 35-year-old pimps, and you know what children's aid says about children, especially in the range of 15 and a half years. They aren't being dealt with by FACS. So I'm concerned about the 16-year-old rule as well.

I'm also concerned—and Ms Molinari hit it right on the head in her critique when she raised concerns about the standards, the relationship that has to exist under section 2 about applicants. I was concerned about elder abuse, for instance, but in paragraph 5 of section 2 you deal with that, those who are related. It seems to me that we could again very quickly come up with situations or scenarios where people are at risk because of their living situations, where there isn't an equality in the relationship that goes beyond co-habitation and/or blood rela-

tionship: roommates, two elderly people living together in a less than co-habitation situation. There's a whole pile of scenarios I think we could come up with pretty quickly that should warrant us looking at section 2. Ms Molinari's criticism of the bill is dead on. It's good to see a government member—

Mrs Molinari: I wasn't criticizing.

Mr Kormos: Well, you raised the criticism. I'm following through, Ms Molinari. It's refreshing. I hope you'll work with me on amendments to—

Mrs Molinari: You're going to get me into trouble.

Mr Kormos: You shouldn't get into trouble for criticizing faulty legislation, Ms Molinari, ever.

There's going to be a whole bunch of things that we're going to be addressing, so thank you very much, Chair. Good for you, Tina.

Mr Bryant: You never should have come back.

Mr Tilson: I've only got a few minutes to speak. First of all, I want to thank you, members of the Attorney General's staff, for coming and making your presentation today. I know you'll be with us throughout the committee hearings.

Bill 117, which is the Domestic Violence Protection Act, is certainly a response to one of the most horrific crimes we have in our society today, which of course is domestic violence. It's important that the issues be discussed openly and that we find ways to prevent this crime and to assist victims of domestic violence.

We have some written presentations that have been given to us today. I imagine there will be more to come. I look forward in the days ahead to hearing some of the oral presentations that will be made by different individuals.

Domestic violence is a serious crime that this government won't tolerate in Ontario. It's particularly insidious because it not only affects the person being abused but deeply affects children who are exposed to violence in the home. This shatters the traditionally held perception that the home should be the place where we all feel protected, where we feel safe and secure and where children learn the time-honoured values of kindness and respect to others. Domestic violence undermines those things, the foundation of our province, which is strong families. So we're committed to creating safe communities. During the past five years we've taken a leadership role in helping to protect victims of domestic violence.

We've demonstrated that we stand on the side of victims. We created and expanded the domestic violence court program. It's the largest and most comprehensive of its kind in Canada. We allocated an additional \$8 million annually to ensure that crown attorneys have sufficient time to meet with victims and witnesses in preparing their cases for prosecution. This gives victims a stronger voice in the justice system.

To support more victims of domestic violence, we expanded the victim/witness assistance program and plan to do more. To get victims in touch with the services they need, we expanded the victim crisis assistance and

referral service and the SupportLink program. To support families in crisis, we expanded the supervised access program.

We're proud of these achievements and we make no apologies for the so-called law-and-order agenda.

Improvements in the justice system are critical in helping victims of domestic violence. The justice system holds abusers accountable for their actions and it clearly delivers the message that domestic violence is a crime. This is one way of breaking the cycle of violence.

When the police enforce and when crown attorneys prosecute domestic violence cases, the message that domestic violence is a crime rings loud and clear. For many years, domestic violence was perceived as a private family affair. The enforcement of the law and prosecution of cases is an important reminder that domestic violence is a crime. The work in the criminal justice systems keeps the public and abusers focused on the message that domestic violence will not be tolerated in Ontario.

This bill is one more step we are taking to protect victims of domestic violence and hold offenders accountable. The members opposite have minimized our achievements in the justice system. They have focused almost entirely on the need for front-line community-based programs to help prevent domestic violence.

This government also provides substantial funding and community-based services. Madam Chair, I guess I don't have time to give those. We'll give that information at a later date. I'll guarantee it.

The Chair: You have—I think it's a 10-minute bell, isn't it?

Mr Bryant: Let him finish.

The Chair: It's a 10-minute bell. That's why I sort of limited you to eight minutes. You still have a couple of minutes if you wish.

Mr Tilson: If I could continue on some of the funding that we have provided to date: as an example, \$51 million has been allocated to support the emergency shelters and related services in 2000-01. We're committed to supporting women's shelters because they keep abused women and their children safe. They also provide practical and

emotional supports that are essential to helping women escape violence in their lives and support children who witness violence.

We funded shelters, including \$1.7 million which was allocated to the Ministry of Community and Social Services in 1999 and 2000 for crisis lines across Ontario. These lines operate 24 hours a day, seven days a week, and fielded over 150,000 calls. We recognize the important role these lines play by offering support and assistance to women in crisis.

We're always trying to improve our services: \$1.5 million annually has been allocated since 1996 for the victim support line, a province-wide, 24-hour, toll-free information line funded by the Ministry of the Solicitor General.

By calling, a victim can speak directly to an information counsellor, who will provide information on supports and services available in their community, register for automated notification about any releases of a specific adult provincial offender and get general information about the criminal justice system. Recently the Ministry of Community and Social Services announced \$10 million annually to enable shelters to hire transitional support workers and establish programs specifically designed to help children who have witnessed violence in their homes.

In 1998-99, almost 3,000 women received assistance through our emergency legal aid service for women in shelters program. We also created specialized services for abused women in partnership with the Barbra Schlifer Commemorative Clinic. This pilot project assists women who want to leave abusive relationships by providing direct legal services, advocacy and information about family law, landlord-and-tenant and immigration issues.

The Chair: Thank you, Mr Tilson. Do I have a motion to adjourn?

Mr Tilson: So moved.

The Chair: We'll reconvene at 3:30 tomorrow afternoon in this room.

The committee adjourned at 1751.

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Official Report of Debates (Hansard)

Tuesday 24 October 2000

Journal des débats (Hansard)

Mardi 24 octobre 2000

**Standing committee on
justice and social policy**

Domestic Violence
Protection Act, 2000

**Comité permanent de la
justice et des affaires sociales**

Loi de 2000 sur la protection
contre la violence familiale



Chair: Marilyn Mushinski
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Tuesday 24 October 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Mardi 24 octobre 2000

*The committee met at 1533 in room 151.*DOMESTIC VIOLENCE
PROTECTION ACT, 2000LOI DE 2000 SUR LA PROTECTION
CONTRE LA VIOLENCE FAMILIALE

Consideration of Bill 117, An Act to better protect victims of domestic violence / Projet de loi 117, Loi visant à mieux protéger les victimes de violence familiale.

The Chair (Ms Marilyn Mushinski): We'll call the meeting to order. Good afternoon, ladies and gentlemen. This is the standing committee on justice and social policy to consider Bill 117, An Act to better protect victims of domestic violence.

Ladies and gentlemen, while members enjoy parliamentary privileges and certain protections pursuant to the Legislative Assembly Act, it is unclear whether or not these privileges and protections extend to witnesses who appear before committees. For example, it may very well be that the testimony that you have given or are about to give could be used against you in a legal proceeding. I would caution you to take this into consideration when making your comments to this committee.

Each delegation has 20 minutes in which they may take the full 20 minutes to make their submission or in which members of committee may want to ask you some questions if there is time left over.

EQUAL PARENTS OF CANADA

The Chair: The first delegation that we have this afternoon is Equal Parents of Canada, Butch Windsor. Good afternoon, Mr Windsor.

Mr Butch Windsor: I'm going to try to stick as close as I can to my notes so that we can keep to the time frame.

Madam Chair, ladies and gentlemen of the committee, I would like to thank you for the opportunity to present today regarding Bill 117. This legislation has helped organizations such as Equal Parents of Canada to understand the need to constantly be prepared. Bad legislation can arise at any time.

For your information, Equal Parents of Canada is a collection of e-mail lists, but mainly EPOC News, in which we have been working the past five years to

coordinate parental equality advocacy. EPOC News is truly national in scope, with about 100 Ontarians participating, and we're growing.

I am a parent who, because of the ugliness of the current divorce laws, has made an investment of my time and skills to help others. My goal is to prevent false allegations, such as those I faced, from materializing in the lives of others. Unfortunately, without government funding, it is difficult to intervene prior to the allegations.

If you, as a committee member, are troubled accepting that false allegations are a big part of the divorce industry, let me use figures that the Ottawa-Carleton Children's Aid Society presented to the House-Senate joint committee when examining the Divorce Act. In 1998, there were 1,600 cases involving allegations of child abuse, 900 of which arose from divorce proceedings. Of these, 600 were false. The use of false allegations of child abuse and spousal abuse is referred to as the ultimate weapon in the divorce industry.

Why do we have such a high rate of false allegations? Power, greed and no consequences are the reasons. As legislators, you should be concerned about how many of these 600 false allegations investigated by the Ottawa-Carleton CAS resulted in charges to the accuser. How many times were children removed from a loving parent as a consequence of the investigation of a false allegation? How many times were the false allegations used in civil proceedings to prevent and oftentimes eliminate a father from the child's life? Who is being responsible for the children's interests to have a loving relationship with both parents? Do you believe this legislation will not create more of the same results?

A lack of respect for people has created general disorder for society. We have become a politically motivated society set on allowing only one view: the politically correct. Legislation such as that proposed here must have an objective and goal. However, we must look to the bigger picture of how society interacts and how we have reached the point of requiring this legislation.

Try to convince me that we are doing our children any favour by forcing them to believe that all men are violent while all women are victims. We are, in the long run, setting the wrong example, one which will lead to a further lack of respect toward others. If our male children grow up with the idea that they cannot better themselves, they quit and become the image that you, as legislators, are presenting with this legislation. Using gender-neutral

language does not remove the motivation behind such legislation.

The question I ask is, what is it that the present legislation does not do which this legislation is supposed to do? Using the knowledge and training I have received by chairing my local 54 division police liaison committee here in Toronto, serving on the board of directors for one of Legal Aid Ontario's community legal clinics and participating in conferences and reading literature about the issue of spousal abuse in general, I do not believe the legislation respects people. Bad individuals will break the law no matter what the law prohibits. I want to paint a picture of a society gone wrong. This legislation is aimed at protecting people's feelings. It is not legislation about right or wrong. I would like to take a few minutes to give examples that support my position before returning to this issue of protecting people's feelings.

Ten years ago, when counselling fathers, we had a standard caution. We told them how on a Friday evening when they arrive home from work, the wife will pick an argument with them and call the police so they can be taken away on the claim of abuse. On Monday morning, while they are arranging bail, their partner is in family court taking the house, the children and the bank account. I'm tired of seeing this happen.

1540

Here's why the issue is still front and centre today. A police officer will make an arrest because he's under a directive from the Solicitor General to arrest or face mounds of paperwork to explain why no arrest. When the individual reaches bail hearing, the challenge from the crown attorney will be so great that the person in the next case, charged with shooting up the local convenience store, is more likely to get bail. Crown attorneys do not like queries from the Attorney General's office asking why a particular individual is out on the street. Then the fight actually begins. In the domestic abuse court you are faced with a crowd, including the judge, who believe the police laid the charges because you were abusive, but not necessarily so, and then they use their power to convict you on those grounds. But what were the grounds? "He said; she said." But the conviction is based upon police evidence which, as stated above, is often distorted by directives.

As a side issue and as a way of explaining the above, in March of this year I contacted Toronto Police Services Chief Fantino and asked for a meeting to discuss the new spousal abuse policy which was presented to my community liaison committee. To this date, Mr Fantino has not responded to my request and has not returned my follow-up calls. The policy was developed through public consultations with shelter organizations, transition houses, hospitals representing the female side of the issue, and, as you detected, no male organizations. Being allowed to the table is part of the solution.

This legislation begins with an explanatory note stating that intervention in cases of domestic violence will occur where there is fear for safety. Is this not a "He said; she said" situation? Where is the call for evidence,

other than this person's evidence, the one who stands to gain control of the family and the family assets? Should we be relying on the police when they are the targets of directives and political manoeuvring? I believe a recent National Post article about the high rate of violence by police officers toward their spouses or ex-spouses was meant to impact on their ability to work effectively. Would you take the chance that an officer will not make you an example of official police policy toward spousal abuse so that no one suspects him of spousal abuse?

This is a similar situation to that faced by the Senate-House joint committee when they were about to release their report *For the Sake of the Children*. A newspaper report came out days before the release of the report stating how the rate of domestic violence meant that fathers should not be trusted with their children. Is this truth or fear-mongering?

The final point I wish to make before summarizing my presentation is that it appears in this legislation that there is a continuation of altering the definition of abuse to meet a set goal. I will remind you of a study from Carleton University where females were questioned about past abuse situations and the conclusion was that over 90% of those surveyed had experienced abuse. Abuse included being sworn at, being yelled at. I can't understand why they didn't account for 100% of those interviewed.

The legislation proposed here is similar to that introduced in other jurisdictions. In Massachusetts, civil liberties organizations have challenged the law in court on the grounds of individual civil rights. Has the government examined the case from that perspective, or is it the intention of the government to simply use schoolyard tactics in forcing the little guy to take the matter to court as a charter issue?

I understand that other provinces have similar legislation. What can we learn from them? It has been my experience in dealing with bureaucracy that the only opinion they are interested in in this case is the one that supports their position.

I would recommend the government consider withdrawing this legislation. Further examination of the issue from both sides is required. Overall, I believe passing legislation which relies on a person's belief as a ground for taking away one's rights is social engineering at its worst. To those who hope to be remembered because of the position taken in regard to this legislation, you surely will be remembered, but it will be our children who will ask, "What did you do to our fathers?"

The Chair: Thank you, Mr Windsor. We have about eight minutes for questions.

Mrs Marie Bountrogianni (Hamilton Mountain): Good afternoon. My name is Marie Bountrogianni. I'm the women's issues critic, which is why I'm subbing in today. My colleague is the Attorney General critic. It is our job to criticize what the government is doing, just as it was their job when a long, long time ago we were in government. Sometimes we take these opportunities to criticize not necessarily the bill directly but perhaps other

ministries that we feel aren't fulfilling their mandate, which is partly why I'm here. I did that yesterday. The parliamentary assistant rebutted with the money they had spent, and so forth.

Rarely do we get presenters who unite us, but I have to say, sir, that you have made me—and I have said before that I support the intent of this bill. I understand and appreciate the research that you have cited, but the reality is that 44 women were killed in Ontario last year, and this bill is attempting—attempting—to begin to look at that problem. I also have a daughter and a son, and although I don't ever want my son, my husband, my father to be discriminated against, I think it's up to me as a mother/wife/daughter to educate along these issues.

I'm also a psychologist by training, and I have actually counselled girls who have been raped and don't even know they have been raped, to counter your argument about being yelled at as considered abuse. It's a democracy. Your views are taken under advisement, but I'm being very honest with you: I disagree with your premises.

Thank you. No questions.

The Chair: About one minute, Mr Bryant.

Mr Michael Bryant (St Paul's): Your research is wrong; your facts are wrong. You are spreading untruths. It's bad enough that the vast majority of Ontarians don't understand that the vast majority of victims of domestic violence do not encounter the criminal justice system. It just makes it worse when these kinds of untruths are being spread around.

This is a democracy. Your arguments have created a dialogue, and I'd just echo my colleague's comments. I would hope that we are united in opposition against your particular viewpoint, sir.

The Chair: Mr Kormos?

Mr Peter Kormos (Niagara Centre): No, thank you, Chair. Thank you, Mr Windsor.

The Chair: Anyone from the government side?

Thank you for coming this afternoon, Mr Windsor.

ALLIANCE OF CANADIAN SECOND STAGE HOUSING PROGRAMS (ONTARIO CAUCUS)

The Chair: The next speaker is the alliance of second-stage housing, Donna Hansen.

Ms Donna Hansen: Good afternoon, everyone. It's a pleasure to be here. My name is Donna Hansen. I'm the coordinator of the Alliance of Canadian Second Stage Housing Programs, Ontario caucus. I am pleased to introduce to you my colleague Joanne Krauser, who is the program manager of Armagh second-stage housing in Mississauga, and Ms Krauser will begin our presentation.

Ms Joanne Krauser: I'd like to start with a brief history of second-stage housing. Second-stage housing was developed in response to an identified need for long-term safety and support for women and children leaving abusive relationships. Emergency shelter workers witnessed women having to return to abusive partners

when leaving shelters because of a serious lack of safe, affordable and supportive housing alternatives in their communities. The lack of affordable housing in the community is more acute today, making the need for second-stage housing for assaulted women more necessary now than at any other time in history.

Approximately 40 women are murdered by their estranged partners each year in Ontario, according to a 1994 study of intimate femicide. The study also shows that women are most often killed after leaving the relationship. The slayings of three of the six women in Ontario this summer prove that point. Gillian Hadley, Pickering, and Bohumila Luft and her four children in Kitchener were living apart from their partners at the time of their murders. Laurie Lynn Vollmershausen, Stratford, had just informed her partner of her intent to leave him when he stabbed her to death while their children ran, screaming in terror, to a neighbour's house, pleading for help for their mother.

1550

The first second-stage housing program in Canada was built in 1979. A 1996 survey by the Canada Mortgage and Housing Corp shows that safety is the number one reason that women, with or without children, seek housing at second-stage facilities.

Today there are 26 second-stage housing programs operating in Ontario. The facilities range from three units to 40 units, with an approximate total of 370 units. They are typically self-contained apartment, townhouse or single-family units where women can live independently with their children for approximately one year. The length of stay depends on the needs of the woman and the program guidelines. Though second-stage housing programs may vary in size, configuration and management style, the mandate of all programs is to deliver services which contribute to keeping women and their children safe. We need funding from the Ontario government in order to continue to provide efficient and cost-effective programs.

Women often access second-stage housing after leaving women's crisis shelters. Living in second-stage housing provides women the opportunity to rebuild their lives and the lives of their children in a safe, affordable and supportive environment.

Second-stage housing provides a unique service to women and their children. Women living at second-stage housing are usually on a low, fixed income. During their tenancy, women are able to set goals and objectives, connect with appropriate community resources, and are provided the opportunity to build on new skills as they move on to economic independence. Support in most programs is offered through individual and group counselling in order to assist women and children to develop coping strategies, build social networks, to enhance self-esteem, to understand the impact of violence in their lives, and to develop realistic plans for their futures.

Many of the children and youth at second-stage housing have been the targets of physical and sexual

violence, and most have been witnesses to the physical, verbal, psychological and sexual abuse of their mothers.

Ms Hansen: We have watched question period and we have heard the opposition members say that they support Bill 117 as far as it goes. We would agree with that statement. More police officers and courts may be necessary and may provide justice and retribution to assaulted women. However, we feel it is necessary to quote Eileen Morrow, who is the coordinator of the Ontario Association of Interval and Transition Houses, when she says that we would rather protect women than mourn them. Of course, after the fact, police and courts and specially trained counsellors are necessary. But to make their workload much lighter, community-based services to the 75% of assaulted women who do not access police or the justice system—shelters, rape crisis centres and second-stage housing—need a sizable, immediate injection of stable, adequate, dependable, annualized funding, funding that will allow these community-based women-centred agencies to be adequately staffed and to be able to provide protection, counselling and other much-needed programming.

Lawmakers and enforcers in Canada are fortunate to have women in every community who are willing to do the hard and often dangerous work of providing safe havens for women and their children who wish to escape from an abusive situation. Workers in second-stage housing programs want to co-operate with the police and the justice system and demand to be seen as equal partners in the struggle to save women's lives. Second-stage housing provides safety for assaulted women at a time in their lives when they are most at risk—when they are making a determined effort to escape their abuser and are determined to end the violence and make every effort to begin a new life free of violence, pain and humiliation.

The demands of the 128 member agencies of the Cross-Sectoral Violence Against Women Strategy Group include a demand for immediate, annualized \$3.6 million of government funding for second-stage housing. As well, the critical work of saving women's lives done by all of these 128 women-centred groups demands funding.

The insidious cycle of learned intergenerational violence must be broken. But to break that cycle, all members of society must work together, equally. Partnerships between violence-against-women agencies, community groups, police, and the justice system must be used to develop prevention initiatives and coordinate the services provided to victims of violence. Sadly, the Ministry of Community and Social Services decided, in 1996, to withdraw completely all funding to second-stage housing in Ontario. That funding had supported in-house counselling services. Withdrawal of this funding has disconnected the government body that gives direction to all other violence-against-women service providers from second-stage housing. Therefore, second-stage housing is no longer directly involved in policy development and program planning. We believe that this is unacceptable.

In the four years since Ministry of Community and Social Services funding was withdrawn, all second-stage housing programs have changed. Counselling programs

have been carved to the bone. Many second stages are in crisis survival mode. Remaining staff and their boards of directors must concentrate as much on fundraising as on services to women. This, too, is unacceptable.

Today, on behalf of the 26 second-stage housing programs in Ontario—and we have provided you with our most up-to-date mailing list with this package—we are saying: pass Bill 117 if you must, but now, please, finally, listen with open ears and hearts to the 128 women-centred groups in Ontario that are demanding an equal place at the table where decisions are made that affect the most vulnerable women and children in Ontario. Show your respect for these groups by supporting and funding their work. Show your concern for the future of second-stage housing in Ontario by supporting and funding the 26 programs that are dedicated to and are so effective in saving women's lives.

The Chair: Thank you, Ms Hansen and Ms Krauser. Mr Kormos, questions? You have about three minutes for each party.

Mr Kormos: Thank you kindly, folks. It's interesting. Yesterday when we began this, I had to refer the committee to one of my constituents who was in my constituency office Friday morning, a woman I've been working with for a couple of years. She's got a Family Court file this thick. We first made contact when she had problems getting the police to enforce the restraining order she had received from the Unified Family Court. Documented: violent husband, bad alcohol and drug problems.

The supervised access centre, Niagara Child Development Centre, won't even supervise the access any more, that's how bad they're saying it is. In any event, he has served papers now upon his ex-wife, trying to relitigate the access, custody, blah, blah. Here we are just before Christmastime. The trial date is set for end of November. This woman had an alarm provided for her from the local committee—Women's Place is part of the committee, but they don't monitor—but they're in limited supply. She had to give it up several months ago because there hadn't been any incidents for a number of months, because we had written to the police chief and the police had started to co-operate with monitoring and being there when she needed them.

She's entering this critical stage. Think about it: before Christmas, all the melancholy and emotions, the prospect of more drinking. The litigation is going to be taking place—I don't want to be overly dramatic, but the woman's a target once again, right? Yet she doesn't have this crummy little emergency alarm because of the scarcity and the limitations that the committee—I'm sure with great difficulty—has to prioritize. If the constituency office has to pay for it out of our budget, we'll pay for one for her.

The government members spoke yesterday about all the enhanced funding that we've witnessed since 1995. Is that true?

Ms Krauser: We haven't been eligible for any of it. Second-stage housing is not eligible because we're not an MCSS transfer agency.

Mr Kormos: Have you suffered cuts?

Ms Hansen: We suffered \$2.56 million on the first day of January 1996. That was 100% of the MCSS funding. Because we've lost that funding we are no longer, as Joanne said, a current transfer agency of MCSS, meaning that not one penny of the \$10 million comes to second-stage housing.

Mr Kormos: Thank you very much. I appreciate your coming.

1600

The Chair: Government side, Mrs Elliott.

Mrs Brenda Elliott (Guelph-Wellington): Thank you for coming before us today to present your point of view. From our perspective there are three kinds of housing that are offered to women, indeed to anyone who is experiencing difficulty. There are emergency hostels, there are emergency shelters for abused women and then there is second-stage housing. As you will know, housing has been evolving over the past few years from the federal government to the provincial government. Then under our government, continuing under the NDP initiative of—what did you call it? Not restructuring. You had a name where you were trying to reconfigure some of the programs and share between municipalities and the province.

We continued that work, primarily focusing on restructuring the education taxes so it didn't land on the shoulders of the property owners. In that process of restructuring, the emergency shelters in fact ended up at the municipal level as opposed to the provincial level. So when you say the word "cut" we have a difference of opinion. In fact, what has happened is the responsibility for that particular series of programs is now moving to the municipalities which are going to be—and there is a piece of legislation in the House now—responsible for housing at the local level; for many reasons, primarily because it's more responsive and more cost-effective.

From the shelters' point of view, there continue to be 98 shelters across the province that provide 24-hour, seven-days-a-week emergency residential care. That has not changed. In addition to that, there are 100 counselling agencies which are funded through Comsoc and the total bill for that is \$82 million a year. Over and above that, the total we're spending on violence-against-women prevention services, which includes counselling for careers, for emotional abuse, advice on housing and all sorts of things, totals \$135 million.

It's a complicated file; no one denies that. But there is a transference of responsibility occurring here and no diminishment of the need or the recognition that this kind of service needs to be offered. Has your organization been working with municipalities in any way to continue in this work and allow the municipalities to understand the importance of second-stage housing and the counselling programs that go along with that?

Ms Hansen: Individual directors of second-stage housing are working with their particular municipalities. As the alliance, I have not been involved in that in any way at all.

I'm sure everything you have said is completely and totally true. I wouldn't argue with a word. The problem is that women can go to women's emergency shelters and they can stay there for a maximum of six weeks. Using Mr Kormos's example of this woman who has problems with an abusive, stalking spouse that have gone on and on, this woman is a perfect candidate to come and stay at a second-stage housing program where she could stay for periods of up to a year, where she could be protected, where she could have what few staff who are left in the second-stage housing programs surviving in the province. She can have the services of staff who have special knowledge in the whole issue of assaults against women and have special knowledge in dealing with the court system to help her to get through that.

The Chair: Thank you, Mrs Elliott.

Mrs Bountrogianni: I too don't deny the government's number and figures, although I do want to point out that when counselling services for children are either where they are schooled or where they live, such as second-stage housing, there's a greater probability of their accessing those programs. Again, because of my background I know how difficult it is. I used to be the culprit. I would say, "Your child requires counselling." That's easy of me to say. I've got a car, I've got money, and I could take my kid to counselling. A lot of these people had to go on three buses to go to Chedoke-McMaster in Hamilton for counselling. They had to take time off from their minimum-wage jobs to do that. That's not the kind of job I had. I didn't get a cut in pay when I had to take my kids to a doctor, for example.

Maybe it's a detail and it's lost to those who make these decisions at whatever level, but having counselling where the kids live or where they go to school is really much more efficient and gives access to much-needed counselling which, in the long run, will begin to end this cycle. It's much more difficult at a later stage in life to end violence in anyone, man or woman.

Maybe you can tell us exactly, besides the one-year stay, what are the other differences between second-stage housing and emergency shelters, to give us all a better understanding?

Ms Krauser: Most second-stage housing is more independent living. They have their own apartments; they usually pay a rent geared to income, a subsidized rent. There's more normalcy to their lives. It's more a reconstruction of the lives instead of this crisis—in our area it's only four weeks at the crisis shelter. The four weeks is just total crisis.

Then when they come to second-stage housing, they have more time to plan. They're given an opportunity, with support, to plan for their future. If they need retraining or they need some personal counselling or their children need some assistance, if they need legal support to go to court, to know what's going to happen at court, a little bit of support; information, education. It just gives a longer period of time to plan for the future, and also to acquire permanent affordable housing. I don't think I'm exaggerating when I say it's a disaster. There is no

housing. After four weeks, where do the women go? Often back to their abusive partners.

Mrs Bountrogianni: Do I have any more time?

The Chair: About 30 seconds.

Mrs Bountrogianni: I was at the women's centre in London on Saturday, which has also taken over the second-stage housing since their funding was cut. I had the statistics yesterday; I don't have them today. But roughly for every one woman who was able to access the emergency shelter, two were turned away. That is how big the need is. Without putting you in a difficult position with statistics, what would you say the equivalent statistics or needs are in the second-stage housing?

Ms Hansen: I'm currently doing a quick survey on that of all of the members for another project that I have underway. What I'm finding is that many of them have waiting lists for the very first time in their history.

The one that I am most familiar with is the one in Stratford where I used to work. We have never had a waiting list until this summer. That's the first time there has ever been a waiting list. I'm finding that in more and more of them around.

The other thing is that there are only 26 of us for the entire province. There are only three in the far north, which means to get to second-stage housing sometimes you're going to have to travel a great distance. I completely agree with what Joanne said. Women who are able and have support systems in their community and who are physically and emotionally able to go and live in the community can go and live in the community. Women who come to second-stage housing often are not able to, because of emotional or physical disabilities, or their children have some kind of disabilities that they need to have the time to look at, so second-stage housing literally saves women's lives.

The abusive males can sit around outside the shelter for four weeks or six weeks, and know that at that time she must come out. But if she can go from there to second-stage housing for a period of up to a year, that gives some breathing space to the couple. It helps to defuse the situation and it makes it safer for her when her time is up, to go and live in the community.

The Chair: Thank you, Ms Hansen and Ms Krauser.

HUMAN EQUALITY ACTION AND RESOURCE TEAM

The Chair: The next presentation is from the Human Equality Action and Resource Team, Eric Tarkington. Good afternoon, Mr Tarkington.

Mr Eric Tarkington: Good afternoon and thank you. I'm going to try to rush through this so as to give you an opportunity to talk to me, but I do have a long presentation so please forgive me if I am rushing.

This presentation has five main points.

(1) Bill 117 was prepared without the help of father-friendly groups.

(2) There is no justification for killing due process.

(3) We believe that Bill 117 will contribute to further harm to children and families.

(4) We ask very seriously, what will history think of us if we continue in this reckless course?

(5) We ask, what can we do to the bill?

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First of all, I will answer a question that must be in your minds: "Who is this?" You probably think I'm the devil incarnate. My name is Eric Tarkington. I'm a single parent of a 19-year-old son. On Sunday I was crying in a supermarket because I was buying the last packet of iced tea for him because he's flying to San Francisco to work and study. That's the last packet I'm going to buy for him for quite a long time. I don't know how long. So I was crying in the supermarket. Men do not have such emotions, I know. It's contrary to all your statistics. Nonetheless, it happened.

I'm a teacher at a community college, and I'm a software consultant. I'm also secretary of Human Equality Action and Resource Team, sometimes known as HEART. HEART is a non-profit corporation registered in 1988. It is devoted to helping rejected parents recover from the horrifying process they are subjected to in the courts. HEART is an advocate for keeping both parents fully engaged in the child's life, even after divorce.

Let's go to my points. There was no father-friendly representation in the preparation of this bill. Currently, all levels of government are gender-biased against men. I am offering here a few examples. I can give you a much longer list, and I intend to in writing. I would like to mention today, though, the high rate of single-mother families when it is perfectly obvious to everyone in modern society that men are equally good parents as compared to women. The radical imbalance of custody and access awards against the father is plain evidence of the way society is treating its men unfairly.

Status of Women Canada exists and costs millions of dollars every year. The Ontario Women's Directorate exists and costs millions of dollars every year. The domestic violence courts exist because the rates of conviction in ordinary court were not high enough and the conclusion, instead of ceasing to do this silly business, was to tilt the table further and make it more unfair so that you could get more convictions.

I will provide examples of inflamed language from debate of Bill 117 on October 3, 4 and 5 in my written submissions. I would also like to point out that there is a total absence of funding for men's issues currently in this province or in any other province of this nation. There are men's issues.

To continue on the point that there was no father-friendly representation in the creation of this bill, men are slandered as violent oppressors, but they gave women the vote soon after they got it themselves. Men got the vote commonly at the end of the last century and by the beginning of this century, out of love and respect, they had given it to women.

There is no outreach from government to ex-husbands, fathers and non-custodial parents. I can say that from

bitter experience. Father-friendly groups come unprepared to hearings and only after laws and regulations are already drafted.

Second point: there is no justification for killing due process. Here are some truths about violence that I can demonstrate to you with good statistics, and I mean to in writing quite soon:

(1) The rate of real domestic violence is very low. This is the most important fact because it cannot justify turning loose a destructive bureaucracy on the province.

(2) Women do more than men of the domestic violence against children and older persons. I can demonstrate that to you with very good statistics from government sources. Women do a significant amount of violence against men. Men are the main victims of violence in society by a large factor, outside of the area of domestic violence, and government shows no interest in this imbalance of harms against men. Women are the safest members of society across the board.

False allegations will be propelled by this bill, and false allegations have devastating effects on their victims. False allegations can be made opportunistically because there are no specified penalties for them and no penalties are typically imposed by the courts, even though the law allows for them.

The provisions of Bill 117 are draconian and should not be used without strong evidence of real harm. The lag time for a hearing with notice is far too long, up to 15 days, depending on the pleasure of the court. Meanwhile, the devastating effects go on.

Innocent spouses can be put out of the home and out of areas that are necessary for normal business and parenting activities. Innocent spouses will suffer financial and emotional harm that is never compensated, and may even become unable to afford or conduct a legal defence, so that the situation remains in place virtually for life. Many of the prohibitions and orders that wouldn't be applied to an innocent respondent are abusive. The abuser is enlisting the court in the abuse.

Harm to children and families: restraining orders are nuclear weapons in Family Court. There are no deterrent consequences to false allegations in Family Court. Access orders can be made moot already. Under Bill 117 they are trumped, with no Family Court process specified to help the Family Court deal with the situation after Bill 117 has destroyed everything that the court crafted.

A restraining order is the start of a cascade of processes in Family Court, and these processes are so drawn out that the court changes custody or access in the end due to the simple passage of time, with the father excluded from the children's lives. Interim custody orders usually become permanent. These provide strong motivations to make false allegations in the first place.

Harm to children and families, continued: possession of the matrimonial home comes with custody, again another motivation to lie. In recent surveys, 90% of the public believe that the Family Court should be eliminated in favour of parental equality and the right of the child to both parents. The overwhelming weight of research

shows that children urgently need both parents but increasingly lose their fathers. Lack of a father is the strongest predictor of a person being jailed in his lifetime. Emotional and behavioural problems are seriously increased in father-absent homes for children of both sexes. Most governments have responded to this perversely by punishing good fathers harder, and Bill 117 is a continuation of this perverse tendency.

What will history think of us? I beg you to remember that governments instituted residential schools. Governments caused the Duplessis orphans situation to arise, the internment of Japanese-Canadians in the Second World War, the satanic cult scare which we have so recently gotten over and the false memory syndrome which we have even more recently gotten over. The people who committed these hate crimes felt uplifted and righteous while they were in the process.

What can we do to the bill? First of all, you can narrow the definition of "domestic violence" used in the bill. I'm operating on the assumption that you won't withdraw it, that you politically can't. So please narrow the definition so that this doesn't get turned loose, damaging innocent people on the landscape at random. You can narrow the definition by excluding the "reckless act or omission" language. Very serious sanctions are going to apply, so I must urge you not to apply them frivolously. Please require a reasonable anticipation of grievous bodily harm or significant damage to property. Don't double up the requirement only for probability, and low probability at that, for taking such draconian measures. Please exclude "recording" from the definition. Recording is often the only way that the innocently accused can protect themselves from false allegations.

Emergency intervention orders are very draconian and should not be granted on an unfounded fear of property damage alone. Please require a first hearing, with notice, within 24 hours of the allegation, in which the accused has right of counsel; the accuser must hold herself available for the hearing within that 24 hours and not delay the proceedings; and you must automatically vacate any temporary order that was not brought back by the parties.

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Please create civil penalties on the balance of probabilities for false accusations and make them compulsory on judges. Courts "may" put a false accuser out of the residence on first offence; "shall" on second. Please impose fines, costs. Be specific. The court may refuse to hear a further accusation from a false accuser.

Not directly within the bill, but I am asking the government to please enact gathering of statistics. Current statistics are issue-oriented toward one point of view. All the statistics that you get through your departments are statistics in which people were paid to demonstrate that men are evil.

Finally, please create outreach to father-friendly groups. We have something to say, and it's safe to be with us in more intimate surroundings than this hearing.

In closing, I would like to say that hatred against men is nearing the end of its course, in my view. I feel very

optimistic now. Fathers victimized by the divorce system are reaching political age, kind of like me, and you will see more of us attempting to influence your thinking. Children from divorced families clearly see how the system deprived them of a parent and other cruelties in the system. Feminists are watching their sons' and brothers' lives unravel, and the public is becoming aware of its own strong consensus in favour of equal parenting and the regard of all people in society as equally good.

Forgive me, please, for speaking so stridently. I was in a terrible hurry.

The Chair: Thank you, Mr Tarkington. We have about six minutes for questions, starting with the government side.

Mrs Tina R. Molinari (Thornhill): Thank you very much for your presentation and for taking the time to come here today. Obviously, in your voice, you're very emotional about the whole issue, and I appreciate that. As a mother of two boys, I sense where you're coming from.

The intent of this bill is not in any way to punish or to be unfair to men; it's more to be fair and to realize the effects of domestic violence in society and to try to do whatever it is we can do as a provincial government to enforce some of the protection for those who are experiencing that type of violence.

In your presentation you said the rate of real domestic violence is very low. You went on to explain some of the amendments and changes you would like to see put in the bill. I'd like to ask you if you could just elaborate a little more on what your definition of real domestic violence is, because it appears to be that it's not incongruent with what is in this bill. You did mention that some of your changes would be to eliminate acts or omissions that cause bodily harm, so if you could elaborate on what your definition of real domestic violence is, as opposed to what we have in this bill, it would help me understand.

Mr Tarkington: The first thing I would like to say is that worthy goals frequently lead to bad law. Focusing on one particular problem, you can do harm in other areas. That is what we believe you are doing.

As to the question of what domestic violence is, it's a difficult question for anyone to face. I think I have to tell you that domestic violence is roughly divided between men and women, except in its most extreme form when people are desperately fighting for their lives, and in those cases men have an advantage. I would agree with many of the liberalized definitions of domestic violence, but I would not agree that all of them, because they can be called domestic violence, would deserve the same remedy. I think we have to approach the matter with great caution.

I did not in my presentation, unless I made a horrible mistake, say that we should not consider a reasonable apprehension of the danger of bodily harm as not domestic violence. But the apprehension has to be reasonable, and it can't be simply an apprehension of danger to property; it cannot be a matter of someone coming and testifying, "Because he made a certain-handed gesture, I fear for my life." The current law permits that, and the

current societal environment encourages it in the justices who will be called upon to enforce the law.

Mrs Bountrogianni: If Mrs Molinari wants to ask another question, I have no questions for this presenter.

The Chair: Mr Kormos?

Mr Kormos: No, thank you, but I'm not ceding my time to anybody.

Mrs Bountrogianni: You can have my time.

The Chair: Mrs Molinari, you have about two more minutes.

Mrs Molinari: I would just like to read into the record that the bill defines domestic violence to include an "act or omission that causes bodily harm or damage to property"; physical assault and threats that cause a person "to fear for his or her safety"; "forced physical confinement"; "sexual assault, sexual exploitation or sexual molestation"; and any "series of acts which collectively causes the applicant to fear for his or her safety."

Where in there do you believe that it is not real domestic violence, to use the same term?

Mr Tarkington: I don't have a copy of the bill in front of me but I recall part of the description regarding the intervention order, which may not be in the definition section, and it includes "reckless act or omission."

Am I allowed to respond to this?

The Chair: You've got about 30 seconds, Mr Tarkington.

Mr Tarkington: I would like to point out that when you're talking about a reckless act or omission, we may have a situation in which the person who is accusing is equally responsible for the omission. This language expects guilt in a person coming before the bench on a very serious matter. If you are attempting to define this out of civil law and then apply criminal punishment, what you are doing is definitely contrary to human rights and tradition in this country.

Mrs Bountrogianni: The Legislative Assembly library research did a great job, and it can't be unconstitutional or against the laws of this country if Alberta, Manitoba, Prince Edward Island and a number of other provinces also include "act or omission" in their definitions.

Mr Tarkington: Governments, in these cases, are forcing men, on their own private resources, to show the government that they are in fact violating their rights. This will cost hundreds of thousands of dollars to individuals and make—wrong is still wrong, even if you have the power to impose it.

The Chair: Thank you, Mr Tarkington.

BRIAN JENKINS

The Chair: The next presenter is Brian Jenkins.

Mrs Molinari: Madam Chair, I would just like to submit from the ministry a chart that was requested yesterday in hearings outlining the major differences between current and proposed legislative provisions, to be shared among the committee.

The Chair: That would be very helpful. Thank you. Good afternoon, Mr Jenkins.

Mr Brian Jenkins: Good afternoon. My name is Brian Jenkins. I am here representing myself. Just as background, I have a master's in mathematics from the University of Waterloo. I'm a fellow of the Society of Actuaries and I'm a fellow of the Canadian Institute of Actuaries. The job of actuaries is dealing with the projection of risk, demographics and statistics, and projections into the future. As a result, I would say that I have some background in both demographics and statistics.

I attended this committee meeting yesterday. I had already mapped out what I was going to say and I threw that out. I'm coming back because I think this committee's underlying principles in this bill are wrong. Mr Bryant is 100% wrong about what the statistics are and I'm very disappointed the Attorney General's office is ignoring them as well.

We are dealing in a society right now that has certain characteristics. These characteristics have been brought about by government and social policy over the last 30 years.

On September 21, 1999, Durex released a study that shows that Canadian children are reaching sexual promiscuity at the earliest age in the 14 countries surveyed, tying the United States. The abortion rate—and I'm not talking about birth control, I'm talking about the abortion rate—in Canada now is that one quarter of all pregnancies are terminated by abortion. There were 115,000 fetuses destroyed last year. Again, this isn't birth control; these are active lapses.

Children in this country are a woman's choice and a man's responsibility.

The fertility rate in this country has dropped, so each woman bears, on average, 1.59 children. The replacement ratio in order to keep our population stable is about 2.1. In four generations, the number of Canadians of child-bearing years will be about 20% of what the population currently is.

Canada's population is maintained in this country—under the provisions and family structures in this country—by immigration, those that aren't touched by this country.

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Marriage is a feared institution by the young. Even the Toronto Star documented that one. Fewer than half of initial cohabitations are marriage. Fewer than half of parents bearing children are married in this country. Lone-parent, woman-headed families increased by 60% from 1981 to 1996. Ontario has increased the number of single-mother families in the period from 1991 to 1996 by 25%. By the way, single-father families in the same period grew by 15%.

Planned Parenthood throughout this country has been on a campaign, because the way welfare is now structured, it incites people to have kids for money. Arlene MacDonald of Planned Parenthood in Pictou, which admittedly is in Nova Scotia, notes that 50% of the teenagers applying for pregnancy tests there want to be pregnant so they can get welfare. Children are no longer something that is necessarily loved.

The Toronto Star, on December 6, 1998, interviewed 11- and 12-year-olds about their focus on life and what they thought. This is the generation of people that is coming on line now. Twelve-year-old Kristy Horsnell told them, "I'm going to marry a really rich guy, then divorce him and marry for love. But first I'm going to have his kids so I get child support."

In Canada, 50% of children are not living with one of their biological parents. Currently about 25% of the new generation of child-bearing adults don't have a biological father involved in their lives and don't have any concept of fathering. The current trends will push this to about 50% in the next 15 years. Certainly legislation such as Bill 117 will get it there quicker.

Men's suicide rate is currently about four times that of women's, on average. StatsCan analysis says that divorced men have about 16 times the suicide rate of women. Certainly divorce occurs well after separation and they do not check what the suicide rate of men is at separation, but you would expect it to be higher.

Now I'm going to talk about some of the statistics that are available and that are real statistics that address directly the issue of domestic violence.

First of all, there are two types of statistics—and we'll go through Statistics Canada as well—and they are called charges and victimization. Charges are what police actually lay charges on or how charges are cleared, perhaps where reports are drawn. As we know from the rape debates, charges and victimization can be very different things. They measure different things. One is the willingness of clients to deal with the society. One is the management of the police practices related to it when you take a look at charges.

Victimization is something different. You go and talk to the people and you find out what the victimization is.

Statistics Canada has released two. One is a study called *Women in Canada*, third edition, dated August 1995. Their number is 89-503E. They've studied women as victims of domestic violence in solved homicide cases. In 1993, which is where their statistics are from—and I would like to point out that's the same year as the violence against women study—there were 97 female homicides that were in a domestic relationship, and they totalled 59.1% of the victims. This is a study of women. If you worked it backwards, if there were 59.1% of 97, that means there were 67 male victims. There are men who are killed here too and there's not an insignificant number of men.

Who kills? Of the 208 women murdered in Canada, 97 were in a domestic relationship. So about 46.6% of assault homicides were domestic violence when it came to the death of women. In Ontario, in 1997, 35 women died from homicide. That's total homicide victims. So you would expect slightly less than half, or maybe about 18, to have died from domestic violence. Every one of those deaths is a tragedy and every single one was a preventable tragedy.

Where do these stack up? Women in the same period of time had 215 suicides, so about 12 times that rate.

They were all preventable tragedies. There were 261 motor vehicle deaths, 13.7 times as many women; 638 died from accidental falls; 1,165 died from accidents in total or 65 times the total number of women that died from domestic violence. So when people tell you what the primary cause of death is, it's accidents. I would like to point out as well, something that I'm very concerned about: 1,316 deaths were related to mental disorders, so about 73.1 times the number of deaths from domestic violence.

All of these tragedies were preventable. They generally impact on women of the same ages, in the same way. There's not an epidemic of any one type of preventable tragedy here.

I would note that if there were 18 women who died, there were about 12 or 13 men who died, based on the statistics of the same period of time.

Solved spousal homicides in 1999, stated in 1999 Juristat, says that in married, common-law, separated and divorced situations: 58 spouses were killed by men, 13 were killed by women, so there the accusation is that 80% of the deaths were caused by men and 20% were by females. I won't ask what the percentage of everybody's plurality was, but 80% and 20% are not necessarily the same thing.

In 1999-2000, a study was done that updated the 1993 violence against women study in Canada. I know everybody is aware of this because this was front page news on July 26, in all the major newspapers. Everybody knows that it came out and everybody knows basically what it said. Let me tell you a little about the study. The study was basically a victimization study. It was based on applying the 1993 violence against women criteria to the entire Canadian population, including men, using the 1999 general social survey.

The 1993 violence against women study that was done in Canada by Statistics Canada has internationally been held up as a joke, as a method of producing results that you want as opposed to balanced statistics and as way to design slanted surveys. This apparently was Statistics Canada's attempt to put it back and put a balanced population in there to show the validity of what happened.

The 1993 survey itself was a slanted study. It only targeted women, and they found that 2% of married women indicated that they had had some level of abuse, and that is Criminal Code definition of abuse, from a current partner in the last 12 months—2%. Now, that was not a statistic that they released anywhere except in the footnotes. They made up other things about lifetime balance and things like that. But let's be realistic: 2% of married women, which we're talking about having to protect, may have had some domestic violence in the last 12 months, from the violence against women study in 1993.

So what does this study show? This study shows that 1% of both men and women in married relationships had some level of spousal violence in the last 12 months. There were actually 85 women and 88 men, but there is

1%. Four per cent of men and women in common-law relationships indicated some level of spousal violence in the last 12 months—4%. When you balance the married versus the common-law, overall violence is said to be 2% for men and 2% for women, just about equal. There actually were a little more men but it's the joy of rounding; you can make everything look the same and the same is likely fine. There actually was about 20% more, if it makes any difference.

Women report violence, however, from previous relationships more strongly than men. In the last five years, based on any intimate partner, 8% of women reported some level of violence, 7% of men. In the last 12 months, 6% of women from any partner, 4% of men from any partner. Roughly speaking, 220,000 women in Canada have had some level of domestic violence in the last 12 months, and 177,000 men.

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Use of support services: By the way, this is a publicly available study; I'm sure you can all get it. You can even download it off the Internet, but if you need it I'll supply you with a copy.

Some 48% of women had access to support services, 17% of men. If you go to the Attorney General's Web site, if you go to the Solicitor General's Web site, if you go to the Ontario Women's Directorate's Web site you'll find there is no support in Ontario for men. I'm not going to go into it, but just from my own personal experience, having been a victim of domestic violence, charges having been laid by the police against my ex-wife, I can assure you there is no support for men in this province.

Police are notified in about 37% of all female abuse cases. Where a woman's been abused, they're notified about 37% of the time. If you want a statistic, there it is. Fifteen per cent of men's abuse is reported. Women call 78% of the time themselves. Men know it's pretty futile; they phone about half the time themselves. The other half are usually reported by professionals who've treated the injuries. Forty-eight per cent of the women who do report want their partner arrested and punished; less than 34% of the men do.

Statistics Canada compared the level of domestic violence in this country to the 1993 study for women. Their conclusion: "There is evidence of a decline in wife assault in recent years. Although both surveys estimate one-year rates of 3%, five-year rates declined from 12% in 1993 to 8% in 1999, a drop which is statistically significant. Most indicators point to a decline in the severity of violence committed against women over this time period.... Assaults also tended to occur less frequently," result in fewer injuries and require less medical attention.

Police statistics say that 87% of reported cases are violence against women. Remember, you had about equal violence; 37% of women were reporting and 15% of men, and if you do the ratio, somewhere the men got dropped off there.

Injuries, minor or major, were about 47%, were in roughly equal proportion. Eighty-one per cent of

women's charges were cleared by charge, which I'm sure Mr Kormos will tell you means that they laid a charge, which means that in 19% of the cases there weren't charges laid. On the other hand, charges were laid only in 62% of the cases involving men. Why weren't charges laid? Twenty-six per cent of the men requested that no charge be laid, about 14% of the women. Departmental discretion, which means that the option of the police and the crown, which of course reports to the Attorney General's office, wouldn't proceed in 7% of the cases, and then in 2% of the cases of women. Other reasons, which include suicides and too-long waits, dropped the charges against 5% of the men and 3% of the women.

These studies in Canada are nothing unique to this country. This is not an isolated study. This is nothing unique. A study done in New Zealand called the Research in Brief: Findings About Partner Violence from the Dunedin Multidisciplinary Health and Development Study by Terrie Moffitt and Avshalom Caspi was published by the National Institute of Justice of the US Department of Justice.

This was a study that followed a number of men and women throughout their lives to find out and trace not only the incidence of domestic violence in their lives, among other things, but also the recurrence rate from those who had witnessed domestic violence.

Just to quote from an article that appeared in Mother Jones called "Hitting the Wall," "A surprising fact has turned up in the grimly familiar world of domestic violence: women report using violence in their relationships more often than men. This is not a crack by some antifeminist cad; the information will soon be"—and actually is now—"published by the Department of Justice in a report summarizing the results of in-depth, face-to-face interviews with a representative sample of 860 men and women whom researchers have been following since birth ... a University of Wisconsin psychology professor" says that "the study supports data published in 1980 indicating that wives hit their husbands at least as often as husbands hit their wives." That 1980 study was a Straus study that was done in the United States and is supported by the US census data.

In 1999, the Home Office of the government of Britain released the components of their 1996 British Crime Victimization Study related to domestic violence. Two documents are available, one called—you've got to admit the British love nice titles, right? Listen to this one: Research Findings No. 86 and Domestic Violence: Findings from a new British Crime Survey self-completion questionnaire.

"Men are more subject to physical violence in a married or common-law relationship, while women report more incidents of violence after separation. Women report injury in about 47% of cases while men report injury in about 31% of the cases. Approximately equal numbers of men and women report that they were attacked, but women have indicated that they were either more inclined to attack in intermittent violence cases, or to not remember who attacked first. Men were more

inclined not to have been violent throughout the incident—but overall, it indicates that in almost half of all cases both parties participated in the violence."

Similar results came out of a study from the international social science survey in Australia, one called Domestic Violence in Australia: Are Women and Men Equally Violent? There again they confirmed that typically in domestic violence in 50% of the cases the violence is mutual.

Reanalysis of the original Dutton and Kennedy study that triggered the 1993 Violence against Women was performed in 1999 by Kwong, Bartholomew and Dutton and published in the Canadian Journal of Behavioural Science. Once again it confirms that in 50% of the cases violence is mutual, and in the other half it's one or the other in about equal amounts.

Studies from 1997 by Grandin and Lupri out of Alberta, Intimate Violence in Canada and the United States: A Cross-National Comparison, which compared the results in Canada and the US, came to exactly the same conclusion: in Canada, domestic violence is a 50-50 proposition.

The Chair: Mr Jenkins, could you wrap up, please. You've got about 30 seconds.

Mr Jenkins: OK. You can see I'm not going to get to the bill.

What this bill says—and the attitude of this committee from yesterday, where Mr Tilson was the only person who used the word "alleged," and I think he managed it three times—is that you have decided to ignore 75% of the domestic violence in this country. This is not a bill to reduce domestic violence; this is a bill to reduce part of it, not all of it. I think this government should very seriously take a look at reducing domestic violence and reducing all of it.

I certainly understand the problems the women's shelters are having in combating domestic violence, but you have to remember that this is a two-way street and you need resources for the other people as well.

Things like false allegations, as Mr Kormos said, you could handle through perjury charges, but I'm sure Mr Kormos will tell you about how many perjury charges can be levelled in Ontario in a year. I would be surprised if it's more than a dozen.

This bill has lost its focus on what it was trying to do, and I honestly think you should go back and take a look at the statistics that are there, because they are right.

The Chair: Thank you, Mr Jenkins.

FATHERS ARE CAPABLE TOO

The Chair: The next speaker is Peter Cornakovic, Fathers Are Capable Too parenting association.

Mr Kormos: On a point of order, Chair: We've just received a package of three photocopied items. Two of them appear to identify the source, Riding the Donkey Backwards and Gender Differences. I believe they identify the source. The third one has no source identified.

The Chair: My understanding, Mr Kormos—are they from you, Mr Cornakovic?

Mr Peter Cornakovic: Yes, they are. I apologize for that oversight. That is part of a book written by Professor Alan Dershowitz called *The Abuse Excuse*. I'll be talking to that one. Please excuse my oversight there.

First let me introduce myself. My name is Peter Cornakovic. I am a professional accountant. I am an executive member of FACT, Fathers Are Capable Too, which is a non-profit organization. It's a parental association. Let me read what our mission is so you have a better idea of who I am and what I'm representing here.

Our vision is that we will change the legal and social attitude to promote shared parenting and formal equality. Our mission is to promote public awareness, provide education and support programs in parenting for children, their families and the total community. We want to establish and provide support programs for parents and children, and we want to support the educational, social and recreational activities of the community.

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Our values, philosophies and principles are that we will, number one, maintain our focus on our vision and our mission. We are respectful of the social norms and laws. We are a moderate, non-violent vehicle for change. We will conduct our behaviour with integrity and credibility. We value the talent of individual members and recognize that success will depend on us as a group, to make things happen.

Bill 117, in my perspective, will just codify the current situation of domestic violence and, in my opinion, it will just perpetuate female victimization. According to the studies that were presented, two of which I presented to you, and I believe touched on by the previous speaker—there's a lot of stats. I was going to go into the stats, but I think the stats were pretty thorough, so I will bypass that process and make this talk a bit shorter.

I think he did a fairly good job of presenting the myths and stereotypes. As per the two reports I presented and the StatsCan report the previous speaker presented, violence is mutual, according to studies and contrary to myopic myths and stereotypes.

Riding the Donkey Backwards: Men as the Unacceptable Victims of Marital Violence is a good example of a study that was done by a qualified psychologist. *Gender Differences in Patterns of Relationship Violence in Alberta* was done by qualified psychologists. The study by StatsCan, *Family violence in Canada, 2000—A statistical profile*, was an update which shows that domestic violence is largely mutual between men and women, contrary to myopic myths and stereotypes.

Although the legislation is not gender biased in its presentation, from my perspective the intention is to make it gender biased. If this happens, this will be in contravention of section 15(1) of the Charter of Rights and Freedoms. It will increase opportunities for false allegations by providing positive reinforcement to dysfunctional behaviour.

The act should guarantee neutral enforcement compared to the current bias that we have in our system. The

standards of evidence should be consistent with the standard in criminal law, and therefore ensure due process in law, unlike the current situation. I recommend that statistical record keeping on allegations and convictions based on gender should be kept for the police, the crown and courts, so we can compare that to the actual statistics on domestic violence and see what's happening there, and make sure the law is interpreted in a non-gender way.

My suggested change to the current bill is that the legislation should be rejected if implemented in a biased manner; the Solicitor General's and Attorney General's office could be held vicariously liable if it is not. This could be worth billions of dollars to the taxpayers of this province, if they are found to be implemented in a gender-biased way.

Children and property should be excluded. Emotional abuse is not a crime for grown-ups. The article I gave you, by Professor Alan Dershowitz, goes into great detail. He goes into such great detail that he even had time to single out Canada, this great country of ours, as being a culture where feminist censorship prevails. I think it's pretty obvious from the legislation and the intention of the legislation that's being presented.

I'm recommending that false allegations should be charged as domestic violence and that access denial should be treated as child abuse. Most qualified psychologists would recommend the same. Standards of evidence should be consistent with criminal law in recognition of the Charter of Rights and Freedoms.

Like I said before, the legislation is not explicit to gender bias, but I can read between the lines, like a lot of other people can and a lot of speakers before me already have. If it is interpreted as such, it is in contravention, once again, of the equality provisions of the Charter of Rights and Freedoms. It will create a huge potential liability, costing the province and the taxpayers of this province potentially billions of dollars for every man falsely accused and without due process in law.

I have some predictions about what's going to happen if this is followed through in its interpretation and is continued in its biased implementation. There will be an increase in false allegations because they are now being positively reinforced with full custody of property and children, which seems to be one and the same, unfortunately. It's contrary to advanced cognitive and human behavioural science, for the psychologists, and in contravention of the Charter of Rights.

It will increase rage and violence in men who are falsely accused, suffering from greater depression, anxiety and insomnia. My organization deals with many of these men. We deal with at least one or two men every week who tell us, "You won't believe the story that I've just had," and it's the same old story: "I've been falsely accused. I've been kicked out of the house. I do not have access to my kids. I'm suffering from depression." The first thing we tell them is, "Go see your doctor."

Current direction on domestic assault, in my opinion, is in violation of section 15(1) of the Charter of Rights and Freedoms.

Like I said, we deal with many victims of domestic violence. We have the situation of one of our colleagues who was hit with a baseball bat in front of a witness and the police would not lay charges. One of my colleagues was accused of bruising his spouse's hand because it hit his eye, by a non-qualified professional. It's almost humorous. Then there's the famous Kickin' Vixen as an example. She's a multiple assaulter. She was not charged. If that's not biased, I don't know what is.

I'd like to finish off by quoting Mr David Blankenhorn on fatherless America. "Fatherlessness is the most harmful demographic trend of this generation. It is the leading cause of declining child well-being in our society. It is also the engine driving our most urgent social problems, from crime to adolescent pregnancy to child sexual abuse to domestic violence."

Certainly, despite the difficulty of proving causation in the social sciences, the weight of evidence increasingly supports the conclusion that fatherlessness is a primary generator of violence among young men. This bill, if implemented in a gender-biased way, will encourage fatherlessness and encourage violence, unfortunately. I hope, if it's implemented, it will be implemented with respect to the Charter of Rights and Freedoms and implemented fairly.

The Chair: Thank you, Mr Carnakovic. Ms Bountrogiani, do you have a question? Mr Kormos? Government members? No questions. OK. Thank you very much for coming this afternoon.

1700

CHILDREN'S VOICE

The Chair: The next speaker is Mr Bill Flores, Children's Voice. Good afternoon, Mr Flores.

Mr Bill Flores: Good evening, ladies and gentlemen of this committee. Children's Voice is an organization advocating for children's rights, especially the right to have equal, meaningful and permanent relationships with both of their parents after separation or divorce. As such, we would like to voice strong objections to the passing of this bill in its present form since we deem it to be highly detrimental to both children and families.

During our several years experience in dealing with marital conflict, we have come to conclude that gender prejudice of any form ends up reflecting negatively on children. It is for this reason that we endeavour to challenge it anywhere we find it.

In our opinion, this bill would not deter domestic violence, but rather incite it. We see it as a pro-lawyer, pro-violence bill. It appears also to have the purpose of increasing the number of domestic violence applicants which will be later used as proof that domestic violence is increasing, contrary to present statistical evidence widely reported in the press. Its mere introduction is an affront to better, non-adversarial conflict resolution mechanisms.

This bill is far worse than the platform, "Shout at your spouse, you lose your house," which defeated a then

leading Liberal candidate in an Ontario provincial election.

In addition to the moral ground of fairness, we would also like to raise objections to the passing of this bill on legal grounds since this legislation is being introduced under preferred-gender policies, where only women's groups are provided financial funding, and is contrary to section 28 of the Charter of Rights and Freedoms. This prejudice provides women's advocacy groups with an advantage over the unrepresented other half of the population by enabling them to lobby and conduct research and ways to manipulate it to their advantage, frequently in very deceitful ways.

It may be worth noting that yesterday, October 23, the government issued a press release by the Honourable Minister of Citizenship, Culture and Recreation, Helen Johns, indicating that they will be doubling funding for women's groups.

During the years of preferred-gender policies, many laws have been passed that need to be reviewed for gender prejudice. Many of these laws have already lead to abuse similar to the famous Salem witch trials of the 1600s, and Bill 117 would only be furthering the grounds for the mob hatred that is being directed towards men, their children and families by radical feminist ideology.

Sections and subsections of this proposed act, mainly under section 5, step on the free will of people by patronizing them and deciding for them by way of unilaterally confirming presumed actions with one-sided, uncorroborated evidence. This effectively takes the responsibility from adults to take basic care of themselves, treating them as children.

As an example of the effects this bill could have if passed, the 63% of false allegations of child abuse during marital disputes admitted to by CAS agencies could be used as a reference. Involving children as pawns in marital wars is a reality, but it is a reality with boundaries only the most vindictive and irresponsible parents dare to trespass on to, sometimes pushed by their lawyers. If we extrapolate this experience to disputes solely among adults, a higher number of abuse-of-process cases should be reasonably expected.

Even though not all of the proposed sections in this bill are bad, many are already covered in present harsh laws. However, not well defined, catch-all wording of some sections are particularly worrisome since they turn existing laws into mechanisms to implement them. Examples are subsections 1(2), paragraph 6, and subsection 1(3). The obscure wording can have such wide applications and ill effects on other sections of the bill that we would need hours, not the 20 minutes provided here, to present them to this committee.

As it is presently written, the sections could be easily used for parental alienation purposes or to gain the upper hand in custody and access disputes.

Should this committee chose to ignore the pleas for reason, we believe that this bill should be reviewed only after pending changes to the Divorce Act and Ontario Family Law Act are implemented. This would minimize

the animosity among the disputing parties and the possibilities for abuse of process that an act like the proposed Bill 117 entices.

We are fair believers that disputing, separating or divorcing parents need help, not to be thrown into an adversarial system that further pits them against each other, increases animosity and depletes them of financial resources, something which goes to the direct detriment of children. This bill provides all the financial incentives for parties to try to harm each other.

Do you have any questions?

The Acting Chair (Mrs Brenda Elliott): Thank you, Mr Flores. We have time for questions. Are there any questions from the Liberal caucus? No. Mr Kormos?

Mr Kormos: No, thank you.

The Acting Chair: Conservative caucus? No. No questions for you. Thank you very much for your presentation this afternoon.

WALTER FOX

The Acting Chair: I would like to now call upon Mr Walter Fox, please. Welcome. Please proceed.

Mr Walter Fox: Hello. I don't think I'll be very long at all. My name is Walter Fox. I happen to be a criminal lawyer and I'm here representing no one but myself.

It came to my attention yesterday morning that this legislation was actually coming forward. At that time I spoke to the person who arranges for people to come and speak and I was slotted in for this afternoon. I've spent two busy working days—I tend to be in a criminal courtroom every working day of my life—and I thought very long and hard about what I might say, between making submissions to judicial officers, to this committee.

The first thing that occurred to me, having a quick look at this legislation, was that you really need to know what's going on in the real world. I came in late and I only heard three speakers. It seems to me they're getting that message across.

I also recall that during a nomination convention when Jean Chrétien was nominated as leader of the Liberal Party—I believe it was 1983 or 1984—he said, "Do not adjust your set. What you see is what you're going to get." It seems to me you're going to hear a lot more of what you've heard so far today.

I would like to point out to you that you will hear from groups, usually women's groups, that those groups are funded. The men who come before you today or in the course of these hearings come before you at their own expense, with no funding from anyone. Keep in mind, most often these are men who are paying support and sometimes are working at two and three jobs. They're here to tell you the harm and the difficulty and the problems that the existing regime in family law is creating for them and how this particular legislation will make it even worse.

1710

It's pretty clear to anyone who's got any legal training that this is criminal legislation in the guise of a provincial

statute. The scheme, the regime, here is some vague definition of what might or might not constitute domestic violence. Then we go through some kind of court process which is a bastardization of anything we've seen before and at the end of it we come out with an order, and you can go to jail for violating that order. It's a pretty transparent scheme to create criminal law without the usual safeguards that Canadians have always taken for granted, things that are now enshrined in the charter and originated in the common law and started way back with the Magna Carta. It seems that the ideological winds are blowing so strongly that they're going to sweep away basic protections that every Canadian expects to have living in this country in the name of some ideological objective which has no basis in statistics or in anything to do with the real world. That's the first view of this legislation.

Consider the legal, political and cultural context in which this legislation lands. We have a family law system which is basically "winner take all." Mom gets custody. Maybe that should be the law. As you read the law, it says the person who can best provide for the best interests of the child will get custody. As a practical matter, mom gets custody. It beats me. Why don't we just say, "In any custody dispute, custody will be presumed in favour of mother." I don't understand why we can't admit that publicly. Maybe that ought to be the law. But we can't, and the debate gets obscured because the best interests of the child come to be defined as the best caregiver or the primary caregiver and it goes off the rails.

Once mom gets custody, she gets the house, she gets spousal support and she gets child support. That's a pretty big prize. That's a pretty big incentive for somebody to maybe do something that's not proper. But the family law as it exists fails us because there's no control. If mom lies to a judge, if mom files a false affidavit, how does that detract from her being the primary caregiver? How does that detract from giving her custody? So we're caught in an environment where mom is going to get custody and everything is going to flow from that, and now you throw in this legislation and the fun starts.

One of the open secrets among family lawyers is that once a court order is made, be it what's called "interim interim" or "interim," that order can rarely be changed, because you can't get back into court, because there are no controls. Technically, what happens is that mom files an affidavit and she says, "Dad has sex with chickens. I know. The neighbours saw it," and on the basis of that allegation she gets custody, the house, support and whatever. Dad moves to cross-examine her. She doesn't show up for the cross-examination. In civil litigation, she would be liable in costs. She might have her case struck out. Not in family law. All that happens is, she doesn't show up. Well, then she doesn't show up the third time or the fourth time. Well, maybe she does show up to be cross-examined, but she leaves. There is no control over her conduct once she has an order.

Understand that clearly and then you'll understand what one of the serious problems in this legislation is,

because the legislation provides that you can make the one-shout-in-the-house allegation—the newspapers talk about one shout and you're out. It isn't even that good. It's an allegation of a shout. It doesn't mean you actually shouted; somebody just thought you shouted.

There are two alternatives. It can go by way of notice—you serve the other side and they come to court and maybe they argue it out—or you go the emergency route. Guess what happens; guess what's going to happen. It's going to be the emergency route nine times out of 10.

"Don't worry about it, Mr Fox. The emergency route provides that within 30 days you come back to court." Well, on day 12 she can't come to court because the children have a cold, on day 16 her lawyer is in another court, and on and on with no control. Does the legislation say that if she doesn't show up within the 30 days to really discuss the issue in a fair and open way, she loses the order? It doesn't say that. Within half a kilometre of where we're sitting there are probably a 1,000 lawyers who can tell you, "Give me this order and I'll protect it and I'll make sure it doesn't get into court for two years. I don't care what the legislation says, because I know how to delay, I know how to adjourn, especially if I'm acting for a mother, and she never has to pay costs."

One last thing. At a certain level this legislation is a version of strengthening what are called restraining orders. There's no one thing that's a restraining order. A bail condition can be a restraining order, a probation order can be a restraining order and maybe what is contemplated by this legislation can be a restraining order.

One of the facts that everyone in the criminal courts knows is that when he's arrested, he's held overnight, he's brought to court the next morning and he's told he can't go home. If it's Friday morning, Wednesday morning, it doesn't matter; he can't go home. Well, she's stuck because the in-laws are coming for the weekend, the mortgage payment is due, they've got to close the cottage, any one of a thousand domestic things. There is a court order, based on her fear of him, that he can't communicate with her. She phones him with impunity; she calls him. He takes the call: "The children are stuck in the car somewhere. I need the insurance policy." He answers the question. Guess what. They're both in violation of that court order. Any lawyer worth his salt will tell you that they're both in violation of that court order, but she won't get charged. He will. That's how it works.

Everybody in the criminal courtroom knows, and I was quoted in the press with this statement—the judge knows, the prosecutor knows, the defence lawyer knows, the person who sweeps up the court knows—that that court order prohibiting him from contacting her will be violated by her. We have no reason to believe that it won't be violated by her in these circumstances as well.

Just to follow up and finish this particular one off: I was quoted in the press as saying that. I was in the old city hall. That's as far as I'll go in identifying anyone. Sorry—I was in the East Mall one morning, and the

justice of the peace stopped me and in open court said, "I saw what you said in the paper. I agree with you. We all know that's how it works and that's what's going on." There may even be a transcript of those remarks. Later that morning I bumped into another justice of the peace, one from the old city hall, and he said to me, "You know, you're absolutely right. That's how these orders work. Everybody knows that she's going to violate the order."

Keeping all of that in mind, I can't imagine what you hope to accomplish with this kind of legislation except maybe to keep the cold winds that blow out of the Toronto Star and out of the Globe and Mail from blowing in here and somehow dissipating your votes. It makes no sense to me. I'm not a politician; I'm only a criminal lawyer.

Those are my submissions. I hope they're of some use to you. Are there any questions?

Mr Bryant: Let me just understand: are you saying that these legislative changes are going to have no effect?

Mr Fox: No. They're going to make everything that's going on worse. They're moving in the wrong direction. They're not dealing with reality.

1720

Mr Bryant: I take it you're not referring to the vast majority of victims of domestic violence who don't turn to the criminal justice system, or is that what you're talking about?

Mr Fox: What vast majority of victims who don't turn to the criminal justice system? What group are you talking about? What numbers are we talking about?

Mr Bryant: I'm talking about the 75% of women who do not go to the criminal justice system.

Mr Fox: How do you know that?

Mr Bryant: Because I go to women's shelters. We go to groups. We meet with police officers. We know of these victims.

Mr Fox: I'm not certainly buying that line. I know all about the kinds of statistics that you are talking about, the one-sided statistics where there are no data: the famous survey that was taken of 13 women in a shelter in San Diego, California, in 1976 and trumpeted that 98% of women in Canada will be sexually assaulted. I know about those statistics.

Mr Bryant: I think those are all my questions.

The Chair: Anyone from the government side?

Mr Garry J. Guzzo (Ottawa West-Nepean): Mr Fox, thank you very much for coming here. We've heard some very interesting presentations today. I think we have acknowledged that this was far from perfect legislation. I think the Attorney General in his opening remarks in the House first of all stated that he was prepared to look at some amendments. Certainly he was clear in caucus on that point.

I'm fascinated that you would take time out of your billable hours to come down here. Let me tell you I practise in Ottawa-Carleton. I don't know whether it would happen there, and I commend you for it, because you don't have an axe to grind. I'm not suggesting that the people who appeared before have an axe to grind, but

they appear to have one. They represent a group; they're organized for that purpose. Let me tell you that not just in this legislation but in a lot of legislation and a lot of committee hearings that detracts from how all of us—I'm no different—feel.

I want to ask you something. First of all, how long have you practised criminal law?

Mr Fox: I have practised law 32 years. I've been pretty much doing criminal law since the mid-1970s.

Mr Guzzo: You did some family law before that?

Mr Fox: I have even recently done some family law, occasionally.

Mr Guzzo: You try to avoid it, though, correct?

Mr Fox: Like most lawyers I know, family law is the last place I want to be.

Mr Guzzo: Why? Explain to the committee just briefly why that is.

Mr Fox: Family law is not law by any definition we would ordinarily follow. Most law ends up with a trial. Most law ends up with an ability to go before a court. A contract is meaningless unless you can have a trial somewhere down the road to enforce it. You hope that the law is done so well by the court and by the legislation that you rarely have to go to court, but all contracts have to be interpreted against the background of a court.

In family law there's absolutely nothing resembling this. Family law lawyers will tell you that they are proud of the fact that only 3% of family law cases get to trial. That's the number they use: 3%. They say, "That means we're doing such a good job that 97% of our cases settle." Madam Justice Kiteley, relying on a decision by Madam Justice L'Heureux-Dubé and the rest of the Supreme Court of Canada, has just told us that settlements and agreements in family law are worthless. They don't mean anything. They can be reviewed and revised and revamped at any time. To me it's demeaning to women, it infantilizes women, but that's what the law tells us. So now you have a legal system where you can't get a trial and the settlements are not binding. Who wants to practise in that area?

Mr Guzzo: Unfortunately, some of us do. But let me just make the point for the committee that on that we do agree. There is a consistent point with Ottawa-Carleton, and let me tell you, as a former provincial judge sitting in numerous areas around this province, including Toronto, that's a constant factor right through this province. That is a fact of life right through this province, and the 3% might be high. Coming from Ottawa-Carleton, I was interested in Mr Windsor's comments. I don't think you were here. He mentioned the children's aid society report done on Ottawa-Carleton that suggested that two thirds, 66%, of the allegations were proven to be misleading, false allegations with regard to abuse. If I recall that study, it applied to allegations against children, which is again the common thread. Do you have any difficulty with that figure?

Mr Fox: I think that figure is low. Without getting into the statistics and my disagreement with Mr Bryant as to what constitutes proper statistical methodology, the

incentive is there. If nothing happens to you if you lie in court or if you lie in affidavits, and you get the big prize, which is custody of the children and the house and the support payments and all of that, why wouldn't you do it?

Mr Guzzo: Are you suggesting that two thirds of lawyers practising matrimonial law in Toronto would insert some form of an allegation in documentation that would lead a provincial court judge or a Unified Family Court judge hearing an interim application to believe that there was a threat of violence, a threat against the child or against the spouse?

Mr Fox: I'm not sure I understand your question. Is your question, would lawyers do it? Let's start with, clients would do it. Let's start with that. Would lawyers do it? Lawyers will take the position, "I don't know. I wasn't there. These are the instructions I've received and this is the procedure I'm going to follow."

I've always felt that if you want to clean out half of the family law files, clean out half the paperwork, you just have to lay a charge on one father's lawyer and one mother's lawyer for filing false affidavits. You don't even have to get them convicted; just let them know they're not immune, and I think you'd clean up half the paperwork out of those courts overnight.

The Chair: Thank you very much, Mr Fox.

We're a little ahead of schedule. I am wondering if Maxine Brandon of Mothers for Kids is here yet. OK, perhaps we'll take a 10-minute recess, committee. I wonder if I could just have a very quick, informal subcommittee meeting with Mr Bryant, Mr Kormos and Mrs Elliott.

Mr Kormos: Our job is to serve you, Madam Chair.

The Chair: We'll be back in 10 minutes.

The committee recessed from 1727 to 1737.

The Chair: We'll call the meeting back to order. Is Maxine Brandon here from Mothers for Kids?

Interruption.

The Chair: No. I certainly would want to have the consent of the full committee to do that. We'll give Ms Brandon a few more moments because she's not scheduled to speak, actually, until 10 to 6.

I have received a request from a member of the public who is present to reiterate what we said in terms of the subcommittee direction yesterday with respect to the deadline for written submissions. Members of committee, you may be aware that originally we had suggested that the deadline for written submissions be November 9. The committee changed that to November 7 at 12 noon, so I'm repeating that for members of the public who are present here today. If you do wish to send written submissions, the deadline to receive those is November 7. There's just a minor glitch with that, the minor glitch being that the newspaper publication did go out with the original date, so if we do receive submissions after November 7, we will continue to circulate those to members of the committee. Any questions?

Mr Bryant: Not on that, Madam Chair. Just to go back to the previous point, is the gentleman who wants to

present now, and I'm in the hands of the Chair, already going to present later on anyway?

The Chair: I have no idea because I don't know what his name is.

Interruption.

Mr Bryant: Can I just say one more thing, Madam Chair? While I think it really should be up to the clerk to decide who fills this gentleman's spot, we can't have spot substitution. That said, if he wants to speak now and he's already scheduled to speak later, it doesn't sound like we're going to have any objection from the government.

The Chair: No. I guess I'm in a bit of a dilemma though, members of committee, because we did finish early and we have to wait until 10 to 6 because Maxine Brandon was scheduled for that time slot. We can't really hear from anyone unless you want to give him five minutes.

Mr Bryant: Could we not hear from him in the interim?

The Chair: If you want the five-minute interim to be filled, it's up to committee. What do you want to do?

Mrs Molinari: Yes, sure.

The Chair: OK, Mr Colosimo. Can you say what you want to say in five minutes?

Mr Colosimo: I can talk for five minutes, certainly.

The Chair: OK, please do.

GENE COLOSIMO

The Chair: How are you?

Mr Colosimo: Hello, my name is Gene Colosimo. I think Marilyn might remember me from tennis 25 years ago.

The Chair: Yes.

Mr Kormos: Were you an instructor?

Mr Colosimo: Well, I could have helped her a little bit, I suppose, on that.

I have talked to about 5,000 fathers in eight years. What we're missing here is that access denial is spousal abuse. I have not seen my little girl for seven years. My mother hasn't seen my little girl in seven years. I haven't worked in five. I'm not the guy you know.

Maybe I'll just do a poem.

You don't know me, little one
but I'm the man that gave you life.
Once we were a happy family,
your mother was my loving wife.
You have no memory of that time;
you were just a baby on my knee,
But I remember everything;
your memory's all that's left to me.
I remember on a lazy morn
counting piggies on your toes
Or else with thumb between my fingers
I'd pretend that daddy got your nose.
Sometimes we played at patty cake
or peekaboo or don't-you-cry
And when the sandman came to greet you,
I soothed you with a lullaby.

I remember how you cooed with laughter
when we nuzzled face to face.
You wore a handmade cotton jumper
that grandma finished all in lace.
But she is lost to you forever,
the angels took her long ago,
She could not bear the separation
from a child she longed to know.
I remember blowing clouds of soapy bubbles,
strolling through a petting zoo.
These are things that I remember,
stolen moments I shared with you.
Divorce is such a tragedy,
broken lives and shattered dreams,
But until you've lost your little girl
you cannot know just what it means.
Survivors of a hurricane and earthquake
or a fire or a flood
Will gladly part with everything
when escaping with their flesh and blood.
But we did not avoid disaster,
we suffered worse than nature's blow.
The court saw fit to separate us,
a father's love you'll never know.
"Child abuse," I cried in anger,
before I learned I mustn't cry.
The courts deal swift with a righteous temper
so I lost the apple of my eye.
Joint custody's the only answer
for a broken family to survive,
Not damning men into isolation to live apart.
To live apart is not to thrive.
I often think about your life,
what greater deeds you might have done
Had both your parents shared the vision,
not just a selfish, spiteful one.
I wonder if the holidays
that I endure with such disdain
Might be a cause for celebration
and not a time of haunting pain.
I do not trim a tree at Christmas
or carve a pumpkin at Halloween.
What use have I for fireworks?
Through children's eyes they must be seen.
I do not hunt for eggs at Easter,
Valentine's can come and go.
Without my little girl beside me
I can't make angels in the snow.
I do not rustle through the leaves in autumn
or jump in puddles when it rains.
A grown man needs his children with him;
alone he'd surely look insane.
I do not care for cotton candy
or sandy castles on the beach.
I could not share them with you, Dolly;
your mother kept you out of reach.
I have no need of Frosty Snowman,
I have no will to fly a kite.
Your absence killed the child within me,
your laughter was my heart's delight.

I've lost a bit there. Anyway, it's not coming out here that access denial is child abuse, that it's spousal abuse. I've seen many Ontario Women's Directorate pamphlets that say if you separate a woman from her family and friends, it's psychological abuse. It is abuse, it is violence to separate a woman from her family and friends if you are a husband and you cut her off. I have been separated from my family, from my little girl. My mother who is 82, prays on her knees and cries and I can't help her. I can't run to the Attorney General. I can't call the police. I can't go to a shelter. There is no place for me to go. I can't see my little girl.

I have a bachelor of science degree. Marilyn knows I was on top of the world when she knew me. I've crossed Australia in a four-by-four. I did 38,000 miles. I've been to Australia two different times. I spent five months on a motorcycle around North America, 20,000 miles. I've been to Japan. I've been to New Zealand; I bought a motorcycle and did both islands. I've been all over the world. I haven't worked in five years.

This has destroyed me. It's easy, as this lawyer Walter Fox said, it's easy to keep a matter out of court. Once you're separated from your daughter, it's easy. I spent \$80,000 trying to get back into court. Do you know, if you file a 3,000-page appeal, you can't be heard in court? You have to get a special appointment date six months down the road.

You can't wait six months. A little girl won't wait for you. She was three when I lost her. She was four and a half before they said I could see her again, and then she wasn't ready to see me. Without any access to her, I couldn't get professionals. I couldn't get the Clarke Institute. My wife appealed their order. I couldn't get a child psychiatrist at Thistletown. I have a psychologist and I couldn't get an order for him because the orders were appealed and appealed and appealed, after \$80,000 of my money and \$160,000, I estimate, on the other side; a quarter of a million dollars on one three-and-a-half year-old.

Now I'm a deadbeat dad. You can have me, Mr Flaherty. You can take me now. You've already taken my little girl. Do you think I'm afraid of jail? Men like me kill themselves. We don't care about anything. I'm not afraid of jail.

You've played your big card. If you want my driver's licence, take it. It's government issue that can be government-rescinded. But if you want my child support you're going to have to talk to me. Sir Thomas More was killed by Henry VIII. You've always been able to take a man's freedom and his life, but you can't take his will. St Thomas More would not consent to the marriage of Henry VIII. You cannot separate my purse strings from my heart strings. You cannot ask me to put food on the table and never let me sit at that table. You can't lock me up because I don't care. Every day without my little girl

is a living hell. This is child abuse and 30% of fathers are having it. I'm not kidding. I've talked to 5,000 men.

1750

Call 410-FACT. It rings at my house. I've talked to men all over North America and they're willing to return the calls. I don't work any more. I had it all. I was technical services with Pepsi-Cola. I flew all over this country. Incidentally, my trips to Japan were first class, all paid with frequent flyer points, and I don't work any more.

What are you doing? Why are we here? Seventy women were killed last year. Why are we here? What's the agenda? Why isn't there funding for men's groups? FACT has been around five years, they spoke, they didn't even ask for funding. What's going on? Don't I count? Doesn't my mother count? I have two sisters; they don't see their own niece. I have a mother, two sisters and a daughter. These are women, these are abused women. Access denial is child abuse and it's spousal abuse.

There's a book called *From Courtship to Courtroom, What Divorce Law Is Doing To Marriage*. I suggest you read it. It's a quick read. Jed Abraham, the Harvard lawyer, says in that book that when it comes to divorce, men are two-time losers. They must pay child support for children they no longer fully father and maintenance to women who are no longer their wives.

If you think access works, it doesn't work. I've seen men crying their eyes out because their children don't love them any more. I don't know what would happen if I even saw my daughter on an infrequent basis. But if the brainwashing is complete, it's irreversible and men are destroyed. La famiglia stops in Canada.

Hitler, was he a violent man? I don't think he killed anybody. Was he prone to outrages? He loved children and women, but he could pick up the phone and he could have you eliminated. That's what we feared from this horrible man. In Canada now if you pick up the phone, storm troopers will come and take you out. If you dial 911 and you're a woman you can be taken away, like we hear about the gulags and things in other countries. Foreign men come here. They have no idea what they're getting into. They have no idea that we've come this far.

The Chair: Mr Colosimo, unfortunately as a committee we do have to go into the House to vote.

Mr Colosimo: I'm very appreciative of the time you gave me.

The Chair: We've got perhaps a couple of minutes if there are any questions, but we really will have to cut it off.

Mr Colosimo: I'm more than appreciative of what you've done already. Thank you.

The Chair: Thank you for coming this afternoon.

Mr Colosimo: Are there any questions?

The Chair: Any questions? This meeting is adjourned to go to vote.

The committee adjourned at 1753.

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Première session, 37^e législature

Official Report of Debates (Hansard)

Monday 30 October 2000

Journal des débats (Hansard)

Lundi 30 octobre 2000

**Standing committee on
justice and social policy**

Domestic Violence
Protection Act, 2000

**Comité permanent de la
justice et des affaires sociales**

Loi de 2000 sur la protection
contre la violence familiale



Chair: Marilyn Mushinski
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICYCOMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Monday 30 October 2000

Lundi 30 octobre 2000

*The committee met at 1531 in room 151.*DOMESTIC VIOLENCE
PROTECTION ACT, 2000 .LOI DE 2000 SUR LA PROTECTION
CONTRE LA VIOLENCE FAMILIALE

Consideration of Bill 117, An Act to better protect victims of domestic violence / Projet de loi 117, Loi visant à mieux protéger les victimes de violence familiale.

The Chair (Ms Marilyn Mushinski): Good afternoon, ladies and gentlemen. This is a meeting of the standing committee on justice and social policy to consider Bill 117. Each deputation has up to 20 minutes in which to address the committee and in which questions may be asked by committee members if there is enough time.

ONTARIO ASSOCIATION OF INTERVAL
AND TRANSITION HOUSES

The Chair: The first delegation this afternoon is the Ontario Association of Interval and Transition Houses, Eileen Morrow, coordinator. Good afternoon, Ms Morrow.

Ms Eileen Morrow: I would first of all like to thank you for giving us this time to speak to the committee. I am here representing the Ontario Association of Interval and Transition Houses, or OAITH. We are a 65-member association primarily of first-stage emergency shelters for abused women and their children, and it's from that perspective that I'm commenting on the proposed legislation.

I'd like to begin by speaking specifically to the letter of the bill and to support some of the positive points within that limited framework. We're happy to see that the definition of "applicants" has been expanded to allow women in a range of relationships, including same-sex relationships and dating relationships, to access this order. We are also pleased that this order, in its emergency form, supersedes other civil orders.

We are pleased that those women in relationships other than legal marriages can obtain exclusive possession of the home, including rental residences, and we support the conditions outlined in the sections on con-

tents of the order and we hope that these will be written routinely into orders by JPs and judges.

However, we have a couple of suggestions for amendments or recommendations for implementation.

First, we'd like to see a section in the legislation or a directive within the legislation that makes it mandatory for police officers to inform women about the availability of this order at every domestic call.

Second, we would like to see an amendment to the consideration of civil orders, subsection 10(1), making intervention orders prevail over other civil orders, not just for emergency intervention orders but for all intervention safety orders.

Third, we would like to see an amendment within the legislation making it clear that charges are to be laid where there are reasonable and probable grounds and that an intervention order is to be provided in addition to charges laid, not as an alternative to them.

With regard to this last, we would like to see the Ministry of the Attorney General or the Ministry of the Solicitor General establish a tracking system to ensure that the implementation of these orders will not have an adverse effect on the laying of criminal charges.

I would now like to turn to the effectiveness of Bill 117. Intervention orders are only as effective as the person who receives the order. So this bill is only effective for those abusers who decide to obey intervention orders. Consequences for breaching this order, even when there is a criminal conviction, are likely to be the writing of a further no-contact criminal order, perhaps a fine or a conditional discharge. We know that abusive men often do not obey bail conditions, peace bonds, probation orders or other criminal court conditions imposed upon them.

This bill then is implicitly limited to providing only some measure of protection to some women whose partners will obey court orders, and even to the extent that the usefulness of this measure exists, the government of Ontario must provide a number of supports to ensure that the bill is of help to women and children. The government of Ontario must (1) ensure that women know about it and how to access it; (2) monitor its implementation; and (3) provide the access to justice measures that ensure that women can exercise their rights to equal justice by applying for the orders, having them enforced and taking other actions women need to take to protect themselves and their children.

To ensure women know about the orders, how to use them and how to ensure that the initiative is monitored, the government of Ontario must increase its support for community-based women's services and groups: women's shelters, second-stage housing programs, women's centres and community neighbourhood groups. They provide first contact and access to community resources for women and children and they provide women with the information and options they need to address violence, including these orders. They will hear first from women whether the orders have helped them, whether they are a useful tool in their safety plans and whether those charged with enforcing them and prosecuting breaches follow through for women and children. Make no mistake about it: this government will rely on women's services to put this bill into practice and to make sure it works and must provide resources for this additional work.

This bill will represent only another empty promise to women experiencing violence unless the government of Ontario initiates measures to ensure that women have genuine access to justice in the family and civil law, and adequate legal aid to enter that system.

Even today, when Legal Aid Ontario has a priority for abuse in its eligibility criteria, women often find themselves unrepresented in family court, but unable to afford a lawyer. For women who need additional hours for translation and language interpretation or assistance because of literacy or other issues, access to justice becomes further compromised. Women are unable to receive fair and appropriate representation or equal treatment under the law, which is their right. Additional specific resources must be allocated to address these equity and access issues.

While the orders in Bill 117 may provide exclusive possession to women of their homes, they will not guarantee that women and children will be able to stay there. The reality is that abusers do not stay away and that, unfair as it is, women and children often do have to leave their homes to seek safety, either from a shelter or from family and friends.

The government of Ontario must ensure that women and children have the supports they need to leave their homes, to move into safe, affordable or subsidized housing and to take the actions they themselves deem necessary to protect themselves and their children.

In September, Premier Harris was quoted as saying that he would make domestic violence a priority in the fall session of the Legislature. During the debate on this bill in the Legislature at the beginning of October, a number of government representatives admitted that the government needed to do more. Other than a re-announcement of \$10 million dollars in funding to community services first announced in the spring budget and a summer promise of \$50 million for a victims action plan, which primarily included technology and criminal system initiatives unlikely to make much of a dent in the problem, this bill seems to be the only priority we have so far seen from the government of Ontario in the fall

session. It is not enough. More can and must be done. If this is the centrepiece of the government's table for violence against women, we can't expect much of a meal.

We need more than the law-and-order initiatives of this current government agenda. As you may already know, only 25% of women who are abused call police and not all of those will have charges laid; 75% will use other options, especially core community social programs, such as social assistance and subsidized housing, women's services and shelters, community counselling or family and friends to help them escape the abuse, if they are able to leave at all. Many will remain trapped in violent relationships with their children.

1540

The solution lies in a cross-community, comprehensive infusion of supports and resources to address all of the barriers women face in an abusive situation.

OAITH is a member of the Cross-Sectoral Violence Against Women Strategy Group which this summer put together a list of 37 emergency measures to address violence against women, measures that we felt could be done within the fall session. If the government members really are serious about doing more, this is the blueprint from which they should build. It can be done and the money is there.

Legal aid reform, for example, could be provided. Mr Justice Sidney Linden, chair of Legal Aid Ontario, has revealed that Legal Aid Ontario now has a surplus of \$41 million. Increased supports for women's shelters and other women's programs could be provided. Shelters and rape crisis centres do not currently need the \$30 million announced this summer by the Attorney General to link shelters and rape crisis centres to police computers at some point in the future; they need that money to provide the direct services and options to women and children fleeing now. Transfer that money to community-based women's services who ensure that women know about measures like Bill 117 and about all their other options, and who monitor and work with community systems on a daily basis to better protect women and children.

I understand there is approximately \$50 million or thereabouts in a victim assistance fund at the Ministry of the Attorney General. Perhaps some of that money could be used to provide supports to women in their communities. The money is there.

During the debate on this bill at the beginning of October, a number of government speakers mentioned that their party had increased spending on domestic violence by \$37 million since 1995. This would not be difficult for the government of Ontario to accomplish. In 1995, \$9 million in annualized funding was cut from direct violence-against-women services. After five years at that rate, the government would have accumulated a total of \$45 million from these funding cuts. The money is there.

Last week, Attorney General James Flaherty was decrying the use of violent messages in the lyrics of rapper Eminem and the fact that he couldn't do anything about it. It will be more helpful for Mr Flaherty, and the

government of Ontario as a whole, to reject the lure of the media moment and, instead, start talking and taking action on things like emergency measures, which this government in fact can do something about.

On behalf of OAITH, I call on this committee to recommend not only improvements to this bill but especially to legal aid reforms and to the community-based women's services and groups on which it depends to be effective. I ask that you address not only the justice issues but also the social policy and social development measures necessary to truly respond to violence against women. I ask that you endorse the emergency measures presented to this government prior to the fall session and that you work to implement them during the month of November, Wife Assault Prevention Month. Thank you.

The Chair: Thank you, Ms Morrow. We have about six minutes, so perhaps two minutes from each party.

Mr Michael Bryant (St Paul's): Thank you very much for coming. You've given us a lot to work with here, and I want you to know that this information is going to continue to be repeated in the Legislature and elsewhere so that we can get the message out that you're advocating and that I support.

My question is this: I asked Ministry of the Attorney General officials, not political staff but officials, whether or not the 1999 Baldwin committee report had been or was being implemented. They said it was being implemented, and they also said that it was a five-year plan and that we weren't five years down the road. Do you have any response? Where are we at in terms of the implementation of that important report?

Ms Morrow: Of course I don't have the report with me today. I believe there was a five-year plan, but to my knowledge the first-year plan has not been put into place at this point and a year has gone by—I believe well over a year—since that report was released. I don't even think that the measures that were recommended in the first year of the five-year plan have been implemented at this point.

Mr Bryant: OK. Thank you.

Mrs Marie Bountrogianni (Hamilton Mountain): Ms Morrow, it has been a couple of months now since the coalition came with those emergency measures. Have you heard from the government since then on that specifically?

Ms Morrow: There was a call from the office of Minister Helen Johns to set up a meeting, I think, but that meeting has not been set up. Other than that, we haven't had a commitment at all from the government of Ontario at this point. We have had a commitment, as you know, from the Liberal Party of Ontario. We've had a commitment from the New Democratic Party of Ontario. We're calling on all parties to put aside partisan agendas and to work with us, but we still haven't had the commitment from the government.

Mrs Bountrogianni: Thank you.

Mr Peter Kormos (Niagara Centre): I'm so pleased that you made the submission, because from day one in the committee hearings—I mean, the bill stands by itself, but at the end of the day the whole business of access 24

hours a day, seven days a week: heck, we don't have the JPs, we don't have the judges, never mind available at 2 in the morning.

One of the problems my constituency office deals with so frequently, and I'm sure everybody else does, is family lawyers aren't representing women even when those women are eligible for legal aid, because legal aid has compressed their block fee to a point where I'm convinced lawyers are ethically saying, "No, I simply cannot do your case justice in the limited number of hours," so women aren't getting legal support. Women aren't getting counsel out there. And although it's a generalization, it's usually the woman who has fewer resources in terms of being able to put cash on the barrelhead in terms of getting lawyers, so I appreciate what you're saying about accessibility to counsel.

Ms Morrow: Obviously I shortened my brief to get it within the time limits here at the table, but the brief actually does mention some of the problems with legal aid, and that is definitely one of them. We know that Legal Aid Ontario has said that younger lawyers, for instance, are not signing on to a legal aid plan. There's a concern about the decreasing number of lawyers who are signing on because the tariff is low, because the hours are capped, and for situations like violence against women and abusive situations the number of hours can increase quite rapidly if abusers begin to use the family court as a tactic of control, which they do on a regular basis. It's very important for us to understand that we need to provide women with access to legal aid for all of the matters that they need to deal with in civil law until those matters are resolved, and that's not happening.

Mr Kormos: In light of some of your comments, the next presenter, I hope, is still the Office of Victims of Crime. They may well have some things to say about where they've been consulted by the government and about advice they're prepared to give in terms of making sure that women can access this law, never mind the lawyers to begin with, making the law accessible to them.

Ms Morrow: I hope that's the case.

Mr Kormos: Stick around and let's see what they have to say. Thank you.

Mr David Tilson (Dufferin-Peel-Wellington-Grey): Thank you very much, Ms Morrow, for coming this afternoon and giving us your views with respect to the legislation and other matters.

The bill, as you know, is generally speaking a preventive type of legislation, and some of the comments that you raised with respect to enforcement are certainly legitimate. I think the government shares with you those views, specifically enforcement of breaches under the Criminal Code, and that has to do with stronger terms and conditions for detention.

My question is one that was raised by a member of the Liberal caucus earlier. I hope this bill will give a number of people, including women whom you represent, more confidence in the system. My question is about the problem which I think you raised: how do you encourage women to call when there's been abuse? You listed off

statistics of how they don't call. How do you do that? I believe that this bill will encourage more people to call, of all genders and all the different people who have been listed off in section 2, but are there other ways?

1550

Ms Morrow: I don't think the existence of the bill in itself will actually make any difference in terms of motivating women to call the police. There has been a long, historical record of the criminal system not responding and that is a factor in women not calling the police. There are other factors, like women not wanting police involvement in their family, wanting to give the abuser a chance, wanting to be private about family matters, and sometimes fearing the police, knowing that their communities in particular have not received fair treatment from the police historically. Those are all factors that are very difficult to overcome. The way you get women to call the police—and let's not forget that's only one part of the issue. That's a criminal act that's being responded to. You're not responding to the violent relationship, you're responding to the criminal act and only the criminal act. So let's be very clear that it's a limited response even when it works.

If you do want women to respond to that criminal act, you begin by giving them the services, the supports and the context that they in fact are comfortable with. Many women, in fact most women, as we know from the stats, are not going to call the police. That's not the first thing they're going to do. The first thing they're going to do may be to tell a family member or a friend or a professional or a shelter or someplace where they can be confidential and safe and not make that kind of a blunt response right away. If you want women to have confidence in that system you have to provide those initial contacts, like women's centres, like neighbourhood centres, like women's shelters, that give women the support and comfort and the advocacy, quite frankly, that they need to engage with those huge systems that often are quite distant and sometimes treat women as though they were basically incidental to the whole situation.

The Chair: Thank you very much for your presentation, Ms Morrow.

Ms Morrow: Thank you for letting me give it.

OFFICE FOR VICTIMS OF CRIME

The Chair: The next presenter is the Office for Victims of Crime: Scott Newark, special counsel; and Dawna Speers, consultant.

Mr Scott Newark: Thank you very much, Madam Chair. Like Ms Morrow, I'd like to thank the committee for giving us the opportunity to make a presentation here before you. Appreciating as well that 20 minutes goes very quickly, I will try to focus on some of the specific issues and yet leave time for questions at the end.

Our office essentially was announced in 1998. We had two primary functions that led us to have some information that we hope to share with you today. In fact,

we've presented a brief that contains more of the detail than I will get into here.

We started off with a review of existing victims' services across the province and, as well, in speaking to individual crime victims. We visited over 300 sites all across the province, including sexual assault centres and domestic violence shelters as well as the public service providers in those areas. Also we operate, in effect, a 1-800 line for individual crime victims to call in, and not infrequently they are people who are victims of domestic violence. It's from those two primary groups, essentially, that we offer our analysis of this bill in the sense of what it provides and also the perspective of what was identified to us as outstanding issues and the context of how Bill 117 deals with that.

As Ms Morrow and some other witnesses have testified before, it's certainly true that a number of people indicated that the bill is of value insofar as it deals with after-the-fact situations, that is, where something has already occurred. But whatever the number is, many people don't access either the criminal justice system or a civil enforcement system. Rather than deal specifically with that, what I'd like to offer is some of our observations about why that is and how this bill potentially deals with it.

It struck us during the consultations we had that the one message conveyed loud and clear was that a lot of women who were victims of domestic violence were of the view that there really was no enforcement of the orders that were in existence anyway, so there was not a heck of a lot of point in going and invoking all of this when the sentence that might ultimately come out was something less than what was needed or that the justice system itself didn't seem to do a very good job of enforcing its own orders. That is, in my experience, not unique to this particular area but something that is reasonably common throughout the entire criminal justice system. This bill obviously is a significant improvement in that sense in that it specifically directs the police on how these orders are to be enforced, and in particular how the emergency orders are to be enforced. That's no small accomplishment, in my view. To give that kind of a direction is significant.

The second concern that was expressed was that there were a multiplicity of orders that were, in effect, given the necessary or usual ancillary matters surrounding these kinds of situations and they were very confusing, and it was often difficult for the police officer at the door. There was a sense that the situation was such that they didn't want to invoke that process. This bill attempts to address that in the sense that it tries to streamline the orders and, I think quite wisely, ensures that any application includes previous applications and other existing orders. It appears as though it's an attempt, really, I think quite wisely, to try to package all the stuff together and to place a priority in relation to these emergency intervention orders.

The third issue that was raised in relation to this was that accessing the criminal justice system may read well

in the book but sometimes, especially if you're a victim of crime and especially a victim of domestic crime, and probably even more so a victim of domestic violence, you can have the best laws in the world, but if you can't access them properly they aren't necessarily worth that much. So I'm pleased to see that the bill contains some direct efforts in that, including directing in the legislation that there shall be, in effect, 24-7 availability of JPs and judges in relation to the orders. That is a positive step forward.

I would also echo Ms Morrow's comments, however, in relation to some of the other issues for people who are victims of domestic violence that they've identified to us quite apart from the criminal justice aspects. If you have a general policy as a government—or as a society, really, not so much government—that says it's a good idea for people, you want to encourage people who are victims of domestic violence to remove themselves from that situation, then it's probably incumbent on society to make sure they have a place to go to. That's not something that's directly contained in this bill, nor logically would it be contained in this bill. In many ways it's a policy issue but it's certainly, in our judgment, a relevant and legitimate policy issue.

There are specific reasons, I would suggest, why it's a good idea that this be contained in legislation, and recognizing that what you are dealing with is encouraging people to use the criminal justice system or at least the administration of justice system. The first is that the justice system is evolving in Canada and in Ontario. Although sometimes it's hard to appreciate, in fact it's getting a lot better. In my semi-biased opinion, that is particularly true in Ontario. It seems to me that this bill is part of that overall improvement. We are getting better at what we do. God knows, we have a lot to do, but we are in part of that process of improving it.

Secondly, it seems that to simply reject the criminal justice system is to accept the status quo, and with respect, I would suggest that is not a desirable alternative.

Third, the consequence of not invoking the public systems is that there is an absence, obviously, of some direct accountability or even assistance for the particular offender who is involved, which initiation of civil proceedings or criminal proceedings does instill.

Fourth, it is a recognition of the fact that issues of domestic violence are matters not just between the person who is the victim and the person who is the offender or the abuser, but they are public concerns. That's something that I would suggest often gets overlooked, but there's a reason why we call it *Regina v So-and-So*, and it is not because all the offences occur in Saskatchewan. It's because, literally, there is a public interest every single time a crime is committed against somebody else, and we don't want to go down the road where we convert that into a private contest between the victim and the offender.

There are a couple of suggestions I have, keeping in mind the time, in relation to content on the bill itself. I noted in some of the definition sections that they are

quite precise. I'm not suggesting there's something more, but generally sections like that contain a phrase along the lines of "without restricting the generality of the foregoing," and then include the specifics. I looked at one of the specific examples defining domestic violence and I couldn't think of something else, but I just mention that you may want to look at that.

1600

A second point that I would suggest you may wish to consider: my experience is that generally anything which is essentially enhancing public safety, increasing offender accountability or protecting victims of crime, it should be expected that it will be challenged under the Charter of Rights, and in this instance, given the way the bill is framed, probably as potentially even outside provincial jurisdiction. I don't agree with that, and our brief goes through all of that.

I just want to offer one suggestion, and it came from my past life in dealing with the federal government on legislation: it's generally not a bad idea to have preambles on bills. The reason for that is not just because you want to express why you're doing this, but because a court frequently will be in a position where it has to look at the reason why the legislation was passed, and the alternative to having a preamble is that the court will take it upon itself to decide what the Legislature's purpose was. It is true that they can look at the debates right here or even the debates within the House, but you get to define in the bill itself the specific rationale. This is generally what occurs under section 1 analysis of any kind of a charter challenge. So I simply make that point as something you may wish to consider.

There are a number of other areas where I believe the minister or the ministry has suggested to you that there are things that could be done in relation to federal amendments. Those are included in our brief. I don't propose to go through them now.

There is one final issue that I'd like to touch on. It deals somewhat with a point that Mr Kormos made, although in a broader sense, and I know that others have raised it too. It's probably my bias, from having come as a front-line prosecutor and then working as the executive director of the rank-and-file police in Canada. I tend to look at things from the perspective of the people who actually do the job on a day-to-day basis, and this is somewhat the same as the point that Ms Morrow was making. It's a great idea to pass this particular bill, and it's a great idea to pass any of those kinds of improvements, but you've got to devote the resources or it isn't going to work.

As I read this bill, there is going to be an increase in the responsibilities of JPs, judges and police officers, and from our perspective, as you will see in the brief, it may be that some of what should be done here in relation to assisting the individual victims and getting these orders is done through an enhanced victims' service, but there's going to be additional work created. That, frankly, is some of the purpose of this. You need to put some dollars

behind that, in my respectful submission, or you may end up with something more illusory than real.

Like Ms Morrow, I am also of the view that the money is there. I know that our Attorney General actually tracked down the fact that there is a significant amount of money in uncollected fines. We need to find a way, it seems to me, to go and get some of that money, to be able to apportion the dollars so we can support what is really quite a good bill, although there is more to do.

I'll wrap it up there. The brief contains a great deal more than that, but I wanted to leave some time for questions.

The Chair: Thank you, Mr Newark. There's probably about five minutes for questions.

Mr Kormos: Five minutes gross?

The Chair: Not gross; total.

Mr Kormos: Aggregate. Thank you very much.

On page 6, you make reference to what you just spoke to, and that is the adequacy of support for people—not always women, but in the vast majority of cases women—seeking relief under this section. It was suggested last week, and I don't want to put words in the parliamentary assistant's mouth or the mouths of anybody else, that the police were going to be the advocates. That was raising the concern about the 2 am application. First you've got to rouse a justice of the peace, but the suggestion was that the police are going to be the advocates. My problem is, down where I come from, in Welland, Thorold, Niagara Centre—there are nights in Welland where for the whole city there are two cops out there on patrol. That's it; that's the complement. The reality is that they simply don't have the resources to walk an applicant through this process. I suspect the police aren't going to be overly enthusiastic about doing it, because it's not a charge per se.

Expand on your recommendation in the report of the joint committee, because that's interesting. That's important, too, very important—critical.

Mr Newark: Yes, it is. The joint committee we attached as an appendix to the back of the report, too. I think they're getting at the same point. You don't want to create a situation where literally, in my judgment, you have a crime victim having to walk themselves through this process. Not only is it not particularly a good idea for that person to have to do that, given why they have to get the order in the first place, but it's also like reinventing the wheel every single time. This is only going to be so complicated after you do a number of these, I would think. It's a much better idea to have somebody who has the specific background in what they're doing about it. You could have police officers doing it, certainly. For example, on criminal charges that is the case, where a police officer in effect conveys those specific issues—or even on peace bond applications, which I didn't actually touch on, the same thing applies there.

Our suggestion was, like the joint committee's, that there should be in effect an expansion, as the government has committed to, of victims' services across the province. It seems to me that is a better deployment of

resources, so that police officers can go back to being police officers and doing the other things they have to do.

Either way, though, Mr Kormos, whether it's police officers, whether it's appropriate victims' services or, frankly, whether it's ensuring that shelters or the other groups that are going to be involved with women have the resources necessary to do it, these are some very good ideas in this bill, but you want to make sure it's got something behind it to give effect to it.

Mr Kormos: I was particularly concerned about subsection 3(3) and the requirement that puts on the applicant without there being any relief. You might want to take a look at that and speak to the government in that regard.

The Chair: Mr Kormos, your time is up. Government side.

Mr Tilson: Comments were raised about the constitutionality of the bill. I'm asking you to elaborate on that in a few brief seconds.

It is my understanding that the principle of the bill is that specifically with emergency intervention of a justice of the peace or a provincial court judge, those orders must be confirmed by a Superior Court judge, and that's the rationale. It has been used in other provinces.

Mr Newark: Correct, and in other cases or other examples of an intervention-type power—and you've got to remember as well that these emergency orders aren't simply being pulled out of the air. There are in fact defined criteria that have to be met and there are specific conditions only which can attach to those orders. All I can tell you is, those are the kinds of things that courts traditionally look at in assessing whether it is a violation of the charter or not.

The other thing is that it needs to be recalled that if someone is talking about there ultimately being a penal consequence, that occurs where somebody has violated the terms of the order and is presumably being prosecuted under the Criminal Code. My guess is they're talking about section 127 of the code. That being so, that's a criminal charge. It's proof beyond a reasonable doubt with all the protections that are there under the charter and pursuant to criminal procedure.

I don't want to offer some kind of an illusion here. My sense generally is in today's world, if it's anything that's effective, it will be challenged under the charter and you simply have to get used to that and prepare your legislation that way.

Mr Bryant: Recommendations 33 through 53, which are appended at the end of your report—is it your submission that the money is there to implement those recommendations?

Mr Newark: I'd have to go through them specifically. Frankly, I didn't prepare for that question. I can say that there are, in my opinion, unrealized revenues. That's a question that certainly government should be analyzing if it decides that those recommendations are things it needs or that should be pursued, but there is no question that there are additional revenues available to government to pursue those programs. One I didn't mention is that we

subsidize RCMP contract policing in other jurisdictions to the tune of about 110 million bucks a year.

Mr Bryant: The other question was with respect to JPs. We have fewer JPs now than we did in 1995, yet we have increased responsibility through this legislation and through other legislation, such as the Safe Streets Act. As far as you can tell—and I'm not going to ask you how many more JPs we need—do we need a significant increase in the number of JPs?

Mr Newark: I don't know specifically. I can tell you that has been identified to me by police officers as a real problem. In my experience a lot of that comes as a result of federal legislation. I'm thinking of C-16 arising out of the Feeney case. There was a not insignificant additional step placed on police officers having to go to get those warrants. What should have happened, and what we recommended at the time, was that given the fact that the federal government was creating this new step, the federal government should have kicked in some dough to providing those kinds of additional JP resources—which they didn't do, by the way.

The Chair: Thank you very much, Mr Newark.

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WOMAN ABUSE COUNCIL

The Chair: The next presenter is Woman Abuse Council: Vivien Green, coordinator, and I believe others.

Ms Vivien Green: My name is Vivien Green. I'm the coordinator of the Woman Abuse Council. I've brought along some representatives from our member agencies. I don't know if I need to introduce them, or do you have their names?

The Chair: I would appreciate if you'd introduce them, please.

Ms Dorothy Bakos: I'm Dorothy Bakos, from Family Service Association of Toronto.

Ms Suzanne Young: I'm Suzanne Young, from Flemingdon Neighbourhood Services.

Ms Sandra Booth-McKelvie: I'm Sandy Booth-McKelvie, from Women's Habitat of Etobicoke.

Ms Green: We appreciate this opportunity. I'm going to say a few comments, then Dorothy will address some, and then hopefully we'll have some time for questions and everyone will, hopefully, respond.

Firstly, I'm here today to strongly support Bill 117 and in particular its ability to provide abused women and their children with the instrumental supports necessary to keep them safe and maintain stability in their lives while attempting to deal with an abusive spouse or partner.

I feel this bill is extremely important in attempting to meet the needs of all abused women and is a necessary addition to providing urgently needed supports necessary to protect victims of abuse. We know very well that many situations of domestic violence involve acts of abuse and harassment that are not currently covered in the Criminal Code. Women must be able to apply for and obtain civil orders to protect themselves and their children. Even with the widespread knowledge around

the limitations and difficulties of current restraining orders, which is family legislation, women have been requesting these orders time and time again. We have also long known that it is in the breaches of these orders that women, as we've seen this past summer so horrifically, have lost their lives.

Hopefully, this new bill provides victims and their children safety through an accessible system whereby they can successfully apply for protection orders outside of the criminal system. Of greatest importance is that these new protection orders are then clearly understood and enforceable.

Among the aspects of Bill 117 that are the most important and useful in assisting women to be safe are the following: providing for a protection order that can be obtained through the civil system and offers a lower test, albeit for an interim period of time. This is critically important for victims of domestic violence where the abuse is serious and ongoing. Victims are often at a high risk, but the behaviour is not yet criminal, such as if this is emotional abuse, harassment etc.

Secondly, providing a civil order that is enforceable: although this is quite self-evident, it has been sorely lacking in our current legislation, as we know, around restraining orders. The fact that these new orders will be enforceable through the criminal system has the potential, I feel, to make them truly meaningful.

The third piece is certainly providing for instrumental assistance to victims. Some of the examples are the ordering of the respondent to pay the costs of counselling for a child, to cover costs incurred by the abused, granting temporary possession and exclusive use of personal property, such as a car, so that she can continue to go to work, and ordering the respondent to spouse abuse counselling.

I would like to talk a minute about accessibility, because clearly accessibility of these orders—and by that I mean women being able to get them—as we've heard already is a crucial element to this. One of the few useful aspects of the current restraining order system is that victims can apply for these in a fairly clear-cut, accessible manner, and in many cases women did not obtain the services of a lawyer. It is really important that this new legislation be as accessible as the previous. Hopefully, women will be able to apply for these orders without a lawyer.

If it is absolutely necessary, we urge that women have to have access to legal aid certificates to enable them to obtain legal representation.

One of the suggestions is that given the aforementioned problems with legal aid that obviously as a system need to be addressed, in terms of this particular bill perhaps specific systems could be set up such that victims could apply for these orders through community-based legal clinics and centres. Again, these orders will only be useful if women can access them and access them easily and clearly.

The questions and concerns that we have with this piece of legislation are primarily issues with regard to the

training and implementation of the bill. We feel strongly that many women's and children's lives are resting on this and urge the province to ensure a comprehensive training and implementation process. As has been mentioned, this requires the investment of resources.

The concerns that we do have regarding implementation include the following.

Nowhere in the bill does it clearly lay out the relationship between this bill and the Criminal Code with regard to the emergency orders. We understand that in some other provinces that have similar legislation there have been specific references to clarifying that if grounds exist for the laying of a criminal charge, police officers who might be attending will automatically lay those charges. It is very important that this bill not be used to relax the criminal prosecution of woman abuse where there are grounds for that. In fact, the effect of this bill must go hand in hand. It can't be used as a way to go back to seeing this as just a family issue.

Public education on this bill and training to all the involved sectors is again absolutely critical to the success. Training of all criminal justice professionals, particularly in relation to ensuring that breaches are enforced, is essential.

As we know from our current system, without absolutely clear understanding by the police of their role and responsibilities and the manner in which they must enforce these orders, the new legislation will be virtually no different.

Lastly, awareness and information to the community will be essential in ensuring that this new bill is useful and used. There has been some discussion about community-based agencies that work with women providing outreach, awareness and education to the community.

Using community agencies such as are represented here to undertake this process makes sense given their ability to reach women and the universal interest that exists in providing women victims of abuse with tools necessary to keep themselves safe and gain necessary supports. However, this initiative will require a comprehensive strategic plan and carrying out of a massive campaign. Materials, resources and funding to agencies asked to participate will be required in order to allow them to undertake this essential work.

I think my colleague will speak a little more to some of the broader issues but I also want to add that obviously this is one piece, a very important piece, but it has to go hand in hand with a commitment on the part of the government and all parties to implement the many, many recommendations that have already been put forth over the last couple of years, starting from the Arlene May, looking at the joint committee report and recently the emergency measures.

This is one important piece. We need housing. We need counselling. I do think this is an important piece but it has to be a community-wide and a coordinated response.

Ms Bakos: Again, my name is Dorothy Bakos. I'd like to say a few words about our agency before getting into the some of the broader issues that face abused women and their children.

Family Service Association of Toronto is a member agency of Family Service of Ontario, one of the community partners that is here today with our colleagues to raise awareness on these issues.

Family Service is about 85 years of age and has a significant history in working with family violence issues for over 25 years now.

We provide a variety of essential services for abused women and programs for children who are exposed to domestic abuse as well as services for perpetrators of abuse.

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We are very excited and enthusiastic with the work that we continue to do with diverse communities as well as education and prevention initiatives.

However, it is increasingly challenging to continue to provide these services and to meet the demands, as well as work with committees such as the Woman Abuse Council, due to a lack of funding, cutbacks that stem from 1995. Many community agencies lost their provincially funded purchase-of-service grants, resulting in substantial funding reductions for many organizations. Many agencies have had their funding reduced by 5% since 1995, forcing agencies to cut back on counselling programs.

This is why we have come together today as colleagues and community organizations, to raise awareness of these limitations and challenges that we face and to ask the government to continue to work with us on finally preventing this epidemic of family violence. In terms of the consequences that it has to families, if we do not act now, this can seriously compromise the safety and quality of life for abused women and their children of all walks of life across our country, across our province, across our city and right across our own neighbourhoods. This is why adequate resources are essential.

With respect to Bill 117, the issues that Vivien has raised, some of the assets around the bill but also some of the challenges, we as an agency, with adequate resources, can position in such a way where we can assist in making sure that information is disseminated appropriately throughout the various populations of diverse communities, so that women have knowledge of what this bill is, how it can affect their lives and how it can affect their safety. Our agency, as other family services type of agencies and social service agencies, have the ability to do outreach and participate in education initiatives. With more resources we can also expand in our counselling programs, because the restraining order is an effective tool that we implement in our intervention strategies when we're working with safety.

I just wanted to conclude by saying that the complexities of domestic abuse are many. That is without question. What further complicates this is when victims of domestic abuse and their children are put in a situation

where they need to also negotiate the system when they are attempting to meet their safety needs. This is why we need to modify the system, such as the criminal justice system. We're looking at the restraining order issues in Bill 117, which Vivien spoke about, and we need to work together across various sectors to ensure the safety of women and their children.

As community partners, we are here today so that we look at how we can resolve these gaps. Again, although it is a challenging task and we realize that there is no one solution, that we all need to work together, we are hoping that we can have the government support to bring these gaps closer together.

The Chair: Thank you very much. We have about six minutes; two minutes for the government side.

Mr Tilson: All three parties, with a few minor changes, seem to be supporting the legislation. I don't know whether you've had an opportunity to look at the bill—

Ms Green: I have.

Mr Tilson: —specifically the intervention order, which is section 3. The bill lists off a number of conditions that could be suggested. There are 13 of them. You kind of touched on this in your presentation. Were you suggesting that there should be some additions to that or that some of the conditions are or are not strong enough?

Ms Green: When I read it, I thought those were some of the excellent parts of the bill. At least the stuff I read talked about things like the respondent having to cover some of the costs incurred by the abused and going to counselling, that kind of stuff. Is that the list you're talking about?

Mr Tilson: Yes.

Ms Green: I'm just saying that those are, in particular, some of the things that I think are most important about the bill, that are very, very useful.

Mr Tilson: It's quite an extensive list, and I couldn't determine whether you thought there should be additions to that.

Ms Green: No, no. I was just trying to pinpoint those as some of what I think are the most useful. I do have to say again, however, that we know that particularly in terms of woman abuse, and perhaps in other situations, it's the breaching of orders of all kinds that is so important. Because how we give a message to both the offender and the victim that we are serious as a community about this—the fact is, the more orders that are there is really important. We do have to have the resources and the training to enforce those. My great fear, as has been echoed, is that if the police do not have the training and the resources and the will to do that, we'll again have a sham, which makes it worse than nothing.

Mr Tilson: The government has stated that the Criminal Code isn't strong enough with respect to the enforcement and making clear as to detention and other conditions. Have you put your thoughts to that at all, as to what changes should be made to the Criminal Code, as to what the Solicitor General or Attorney General should

be saying in their meetings with their federal counterparts?

Ms Green: From what I've seen, it's more a matter of that on paper I believe we have, even now, some of the means to do it. It's a matter of in fact enforcing. I had the opportunity to sit on the joint committee, and it was very clear that policy people were completely unclear about how to enforce restraining orders. One of the things I think about this law is that it has to be very clear how they are enforced. Police have to know that it is their job to do this.

Mr Tilson: I was thinking with respect, if I could interrupt—

The Chair: We are running out of time; I'm sorry.

Mrs Bountrogianni: Thank you very much for your presentation. I'm going to repeat a question that my colleague asked earlier of another group, because it's very important. Have the recommendations of the 1999 joint committee chaired by Judge Baldwin been implemented satisfactorily? I know it's the end of the first year of a five-year plan. What has been done satisfactorily?

Ms Green: As one who sat on the committee, I can say quite fully that I do not believe they've been implemented. Certainly, there are some elements of the joint committee that have been started. I think it's been quite clear that this government has taken an interest in criminal justice changes. I do have to say, again, as one working at the front line here in Toronto, that even the implementation of the specialized courts is being severely challenged because of lack of resources. I know right now in Scarborough the court people there are desperately anxious and eager to set that up but are unable to do it because of lack of resources. So we have that piece.

In terms of all the other areas, the joint committee very much looked at this as a holistic problem that has to be dealt with by our entire community, and the joint committee report echoes the kinds of things the emergency measures talk about, so I would have to say in most of the other areas—now, we have seen some changes. There was some money allotted for the child witness program. But we certainly are not there at all. I think that is certainly a place to start. We are all saying the same thing—the emergency measures, the joint committee—and we need to do it. It's not one sort of way to go; we have to deal with all of these.

Mr Bryant: Do we have more time?

The Chair: You have about 30 seconds.

Mr Bryant: OK. I just want to make sure that we're clear. I'm always told the same thing whenever I ask this of the government: "Oh well, we're only a year into it." Are you saying that despite the fact that we're just a year into it, we're not where we should be after a year?

Ms Green: Definitely. We—

Mr Bryant: Definitely not?

Ms Green: We're not where we should be. There was an actual time frame that we put together. Again, we're not suggesting that it would be followed to the T. I think

what is so problematic is that the resources that are there have been put into only criminal justice, and, as I say, not even adequately; and issues like housing, such a critical aspect, and counselling, as you heard, so—

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Mr Kormos: As Ms Lankin points out, we're what, two years beyond the May-Iles jury recommendations? Not just a year—two years.

I appreciate your comments because they're consistent with what other folks have said. Look, Ms Hadley was murdered by a murderer who was released once on a judicial interim release order by the police, subsequently by a court. That person was subject to two orders. So at the end of the day, all the orders in the world, whether they're under Bill 117 or under the Criminal Code by virtue of being judicial interim release orders, ain't worth the paper they're printed on unless there are the will and the resources to make sure these darn things are enforced in such a way that it protects the person who is intended to be protected.

It's not enough just to call the cops after the guy shows up with a shotgun, because it's too late then. So you're addressing, as I understand it, because I think we agree, the fact that if we don't have resources for cops, plus training, and for justices—they shut down whole courtrooms of justices of the peace this summer past and tossed out weeks of charges because there weren't enough JPs to sit. So I'm worried. My concern is that when I see a JP's court—you know, the bail courts—they've got three pages of dockets, they're under pressure to process these. No bloody wonder people are getting released without adequate consideration of whether or not they should be held in custody and what the terms should be.

Ms Green: In addition to the issue of more JPs, one of the perpetual issues is training. I think in the Hadley case and many of these it's many times JPs who are not enforcing the orders. So again, it's the whole issue of training and commitment and resources.

Mr Kormos: I appreciate you folks coming today. Thank you.

The Chair: Thank you, Ms Bakos, Ms Young and Ms Booth-McKelvie.

CROSS-SECTORAL VIOLENCE AGAINST WOMEN STRATEGY GROUP

The Chair: The next presenter is the Cross-Sectoral Violence Against Women Strategy Group, Punan Khosla and Beryl Tsang.

Ms Beryl Tsang: Hi. My name is Beryl Tsang and I'm with the Cross-Sectoral Violence Against Women Strategy Group. I apologize that Punan Khosla will be unable to join us today due to illness. I think she's one of the many Ontarians who has been felled by this flu that seems to be going around.

I wanted to begin by saying that I've worked in this field for a long time and I've seen it grow, I've seen it progress and I really think that Bill 117 is a step in the

right direction. But I think it needs to be part of an interdependent strategy and it needs to be part of a series of actions that promote women's equality in Ontario.

It is time for practical government action. This summer, as many of my esteemed colleagues have said, we've witnessed brutal, unrelenting violence against women. Almost every day we've picked up newspapers and we've seen that women have been either murdered or seriously injured. For those of us who've worked in the field, names like Gillian Hadley, Hemoutie Raghunauth and Bohumilla Luft aren't just names of people in newspapers; these are women who are someone's mother, they're someone's sister, they're someone's daughter, they're a friend. Their murders aren't random and they're not isolated acts of violence. These are deliberate acts of violence committed by men against women.

On average, 40 women a year in Ontario are murdered by a partner or a former partner. Men are charged every day with assaulting, threatening and stalking their wives, girlfriends, common-law partners and their children. While thousands of women seek refuge in women's shelters and help in violence against women programs across the province, many more remain with an abusive partner because they lack the means to leave.

I think it's really well established that violence against women is rooted in social, political and economic inequality. I don't think women are willingly victims. I'm not a victim but I could become a victim if I could not access—and "access" is a really important word. We've just completed a study on women's access to justice. I could become a victim if I could not access the judicial means, the economic means to protect myself and my children.

I think what's really important is strengthening women's economic and social position and valuing children. Adequate social and economic supports may well have saved the lives of the women who were murdered this past summer. I think that we need to ask ourselves, why should we adopt an equity approach? Aside from the fact that it's right and just—it's just not economical. Inequalities between men and women have led—and I quote the following 1995 statistics: in 1994 woman abuse created the loss of over \$10 million in tax revenues nationally due to early death, premature death, missed days of work and incarceration. In 1995 the national cost of woman abuse to the health care system was almost \$1.6 billion. That's just an aside.

Basically, Ontario is becoming dangerously polarized between the haves and have-nots, and many women find ourselves at the short end of the stick. Over the last two decades, the percentage of women living in poverty in Canada has been climbing steadily. Almost 19% of adult women are poor; that means we live below the LICO. This has unquestionably weakened our ability to leave abusive relationships.

While all women live with the threat of male violence, I really want to call your attention to women living on the margins of our society. Aboriginal women, racialized

women, recent immigrants, women with disabilities, deaf women and poor women are faced with compounded inequalities that weaken our position even further.

In recent months, public discussion of solutions has focused on the criminal justice system and tightening up on offenders as well as pouring money into programs for male batterers. While violence against women needs to be understood as a serious crime, which is the responsibility of the men who commit it, I think there's a tendency for policymakers and for media to divert attention away from the needs of women and children. I find this a really dangerous position.

Women's advocates have long called for criminal law reform to ensure the much-needed protection for women and children, but we are disturbed by the way in which safety issues are now used to justify law and order initiatives in place of effective social programs, prevention, health promotion programs. I really am concerned that the law and order rhetoric is based on the exploitation of public fears of "stranger danger." It favours the use of a heavy-handed law enforcement strategy against socially disadvantaged groups, which in no way addresses at the root the violence women face in our society. It also serves to scare off women in low-income and racialized communities from reporting violence, putting those women at further risk of death or serious injury.

Male batterer programs are as yet unproven—there's no research that shows their effectiveness—and cannot in any case be seen as a priority over much-needed programs and services for women.

Years of cuts to our social programs, legal aid, direct anti-violence services and neighbourhood supports have left women in a hardened state of inequality. Women's safety really depends on a comprehensive, consistent, long-term approach that addresses the root problems.

But women and children can't wait. The coming session of the Ontario Legislature must enact immediate measures that bring down some of the obvious barriers standing in the way of women's ability to protect ourselves and our children.

I actually do have handouts. Basically these are emergency measures. This is an abbreviated list. There are hundreds of them, but these are our immediate demands. What we are calling for is a commitment of \$50 million to community-based services for women and children, in particular emergency services such as crisis lines, shelter funding. The coming year's budget should allocate a further \$50 million in annualized budgets to independent community-based women's shelters, including those not currently funded by MCSS. In communities where there is a documented urgent need for additional shelter beds, funding should be allocated to begin this expansion, as promised in the government's Common Sense Revolution document; immediately implement the shelter funding review, as recommended in the Arlene May inquest; access to second-stage housing, funding for second-stage housing programs.

We'd like to see the reinstatement of the 5% cut to rape crisis centres funding to make provision for annualized increases and core support. We'd like to see funding for one community outreach person in each rape crisis centre. We'd like to fund counsellors within rape crisis centres for support for women who are sexually harassed in the workplace.

There is the importance of granting funding for women's neighbourhood and advocacy groups to provide ongoing province-wide funding to women's anti-violence advocacy groups; funding trained violence against women cultural interpreters in immigrant and settlement agencies; ensuring sufficient and stable funding to French-language services in community-based agencies throughout Ontario; and providing stable funding support to women's centres.

This is the part that is near and dear to my heart and this is the part I would really like to speak to: legal reforms and services. Again, I said Bill 117 is a good starting point, but an additional infusion of funds and resources is needed to be allocated to legal aid.

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The number of hours that abused women and children are guaranteed by the legal aid plan is not enough. There are not enough women-centred legal clinics for abused women. So we would like to see an increase in the tariff that's provided.

It's critical that women are provided with funds for cultural, deaf and ASL interpretation in Family Court as per the current provisions in criminal and immigration court.

Our research in the area of women's access to justice has really shown that women are not provided with adequate access to justice when they're in court. They are often subject to being interpreted by their former partners who are abusive, or judges and so forth do not provide appropriate interpretation for them.

Extend legal aid coverage to abused women to include divorce and all property matters.

Provide legal aid to women who are victim-witnesses in criminal cases.

Provide legal aid funding for representation of women making human rights complaints about harassment in the workplace.

The criminal law reforms need to be increased to protect assaulted women who have been on hold for many years. The province has yet to implement many of the detailed recommendations from the Arlene May coroner's inquest jury, and recommended changes must be put on the front burner.

Risk assessments need to be conducted and an offender's previous history of violence must be completed and on file before all first bail hearings for abusers. When release on bail is granted with a no-contact order to a man charged with violence against women, one breach of that order must mean that he is denied further bail.

We need immediate direction to crown attorneys to argue women's charter rights to life, liberty and personal security in all bail hearings.

Family law reform: fear for the safety of their children is one of the most important concerns for abused women. Manipulation of the Family Court system is a common tactic of abusers to continue their control over the family. Possible apprehension of children who are witnesses to violence is a major deterrent to women reporting abuse. This is really important. One of the things our research has shown is that women are often streamed into mediation, even in cases where there is abuse. They are streamed into parenting programs. Implement a policy of no mediation where there is evidence of past or present abuse. There can be no negative judicial interference when a woman declines mediation because of personal safety concerns or concerns for her children.

We insist on the increased availability of supervised access exchanges and centres to ensure they are available to all women who have safety concerns. I cannot tell you, when we were doing our research, the number of counsellor-advocates and lawyers who cited the deaths of women on custody and access exchanges.

Improve and expand the nature of supervised access centres so that fathers and children can have safe, meaningful visits with proper, trained and consistent supervision, in the appropriate language with appropriate interpretation.

Implement the family law recommendations of the Arlene May inquest and implement a mechanism to track the impact of new child welfare legislation and practices on abused women and child witnesses of violence.

We call for the allocation of core government resources to ensure the economic survival and workplace safety of women and their children across the province.

We ask that an implementation of an annual cost-of-living adjustment to welfare rates take effect. We ask that you provide referrals to community legal aid via plain-language letters to all people denied a benefit or cut off welfare. We ask that you provide anyone denied benefits through the new call centres with a telephone link to a community legal clinic for advice.

We want you to drop the appeal on the spouse-in-the-house rule to ensure that women are able to maintain financial independence, and drop the plan to penalize for "benefits stacking" and maintain current policies allowing women to access multiple provincial services as they need them.

End the clawback of the federal child tax credit for families on welfare.

We'd like to see implementation of a policy to abandon the practice of requiring and/or requesting that women disclosing violence seek child support or spousal support in order to qualify for social assistance.

Allow full deferment of or voluntary participation in warfare.

We would like to see a 1% increase to the pay equity fund as an adjustment to all proxy agencies to ensure the

survival of women's agencies and the services that meet their legal pay equity obligations.

Lastly, we ask for workplace protection for women.

We ask that you designate the first week of June as a province-wide sexual harassment awareness week.

Include in the Employment Standards Act protection from termination for all women who are facing harassment, abuse or stalking in the home or workplace.

Extend the proposed family leave provisions to provide protection for women who are being assaulted, abused, harassed or stalked at home or in the workplace.

Extend the proposed family leave provisions to cover workplaces with fewer than 50 employees, as only about 5% of all businesses in Ontario have more than 50 employees.

Extend the Employment Standards Act parental leave provisions an additional 17 weeks to cover the entire one-year period for which EI benefits are now available.

Thank you. That was it.

The Chair: Thank you, Ms Tsang. We probably have about three minutes for questions, so if you could keep it brief, please.

Mrs Bountrogianni: I'll ask you a question, and if you quite understandably don't know the answer, maybe the parliamentary assistant can answer.

Recently the government announced \$5 million in funding to early intervention programs for child witnesses of abuse. You mentioned earlier, and it was mentioned before your presentation as well, that there's been a 5% cut over the last six years to shelters and programs, and second-stage housing counselling has been—to your knowledge, does this \$5 million replace that money? How much money was cut for counselling? Do you know?

Ms Tsang: To the best of my knowledge, it actually hasn't replaced it. What that \$5 million has done is actually expanded the ability of other organizations such as hospitals and children's mental health agencies to access government funding in order to provide specialized services in that area.

Mr Kormos: Very quickly, you should have been pleased—I wish you were here last week when Ms Elliott lectured us for a good three minutes on all the increased funding that this government has invested in women's services, women's shelters, programs for abused women etc. Can you please tell us what's happened to the core funding, and what has it meant for women's shelters like women's places, women's centres, across Ontario?

Ms Tsang: Since I'm actually not with OAITH, I would like to ask my colleague Eileen Morrow to answer that.

Mr Kormos: That's fine by me. Go ahead.

The Chair: You've got about 30 seconds to answer that.

Ms Morrow: With regard to the effect on the services, what we have is an increase particularly in crisis calls and women calling shelters, and we have a decrease in the amount of service that we can actually provide to these women.

Mr Kormos: What about the funding?

Ms Morrow: In fact, the funding cuts have not been restored. What we have is an increase in women calling, an increased demand, and pressure on the services. So we have less service to each individual woman and child as a result.

Mrs Brenda Elliott (Guelph-Wellington): I guess in response to my colleague across the way, I was taking the time to point out a number of the programs that our government does offer. In listening to the very extensive series of demands that have been presented this afternoon, it would make it appear as though the government doesn't offer any programs. In fact, we offer a myriad of programs. I was indicating in my comments the other day about the \$135 million in various programs that we do offer and additional programs that we're undertaking.

I was curious to hear your comments about the haves and have-nots and women not doing well in the economy and so on. I thought you might be interested in the following: in 1999, of the 198,000 new jobs created in Ontario, 46.5% were gains by women. In fact, of all the 768,000 new jobs in Ontario, women gained about 51% of those. So I think it's important to recognize that there are many opportunities for women. Part of the challenge that we are all facing, whether in government or out of government, is that women need opportunities for economic independence, and that will give them some opportunities for independence should there be issues of domestic violence facing them.

Ms Tsang: I actually don't dispute that.

The Chair: You have about 15 seconds to answer that.

Ms Tsang: However, most of those new jobs are not permanent positions; those are part-time jobs. They're entry level. They don't pay for the cost of child care in Ontario, and while they may be new jobs, they certainly are not ones that some of our clients can access.

The Chair: Thank you, Ms Tsang.

1650

CANADIAN CHILDREN'S RIGHTS COUNCIL

The Chair: The next speaker is Grant Wilson, president of the Canadian Children's Rights Council.

An emergency alarm sounded.

The Chair: That's been happening all afternoon, by the way.

Ms Frances Lankin (Beaches-East York): I thought it was because Mrs Elliott said something that someone disagreed with up above.

The Chair: I don't think you can hear that in the House, though, can you? You can't hear that buzzing. We're working on it. It usually takes about two days to warm up; that's the problem.

Good afternoon, Mr Wilson.

Mr Grant Wilson: Good afternoon. I'm Grant Wilson. I have a rather unique background which perhaps I can explain a bit before I get going. I've had sort of

short notice here. I found out about this at 11 o'clock this morning, that I would be here, and I will be presenting a written presentation to you before the deadline later on.

My background: I've been interested in gender issues for most of my life. While taking business administration, a three-year program at a community college, I took women's studies; I received a B in that. Some people suggested that since there were only two males in the class, perhaps I was really an A student but there was some gender discrimination there. I think I was worth a B.

I have been involved with various groups in different capacities. I'm a computer consultant. I've done computer consulting work and provided networking services etc, consulting regarding that, to two different women's shelters. I've been involved with a number of support services for both men and women. I've gone out and done surveys of a number of these issues with the police in Halton-Peel, Hamilton-Wentworth and Toronto. I've talked to many police officers. I've been involved with assisting victims of domestic violence, particularly men, when they've gone to court. I have found that with the police and the court system there's a substantial bias against these men.

I can give you personal information in these cases. For example, the 5'1", 100-pound wife of my neighbour in Oakville was charged for a second time for assaulting him with a weapon. The restraining order was such that she could come back to the home at certain times. She would not leave at the time designated, and when the police were called twice, they came over and didn't do anything about this. She belted him in front of the police officer and they didn't charge her again, or anything else. When this went to trial, I accompanied him to trial and the judge found her guilty. Her explanation on the stand was, well, she got mad, but she was getting counselling for this anger from a psychiatrist, and therefore he sent her home again. The judge commented on how he didn't want to affect the family law case. He was really affecting the family law case by putting her back in the home after she was found guilty for a second time of assaulting this man with a weapon. The judge also stated that he believed the man when he said he'd been assaulted on five other occasions that he hadn't reported to the police, and those were unfortunate. He had his lip split open while he was driving his van with his son in the back etc.

So I've gotten involved with quite a number of different things. I've been to court many times with these people. I've helped a woman with a restraining order she had to get her ex-husband out of the matrimonial home. In that particular case there was no violence involved; it was simply that he was prolonging this, you know, "marriage is forever" and didn't quite get the message and was asked to leave by the police, etc, and had the restraining order. So I've got a background of involvement with a lot of these different issues and support groups for men who are victims of domestic violence.

I have seen quite a number by this government, which wishes to promote that only women are victims of domestic violence in their multi-million dollar campaign to support Crime Stoppers. Approximately a year ago on the front page of the Toronto Star we have a staff sergeant who's liaison with the Metro police and Crime Stoppers stating that 25% of the calls they get regarding domestic violence have men as the victims.

I have a report from Peel Regional Police, which I would be happy to submit, that has my landlord at the time, who was about 5'2" and 110 pounds, attacking her husband. When the police came and she answered the door at 3 in the morning, the police officer—and I knew the officer from all my experience with them. This is a 20-year officer who was in charge of training all the new recruits. She had said the man wasn't home. When the police officers insisted on entering the home to check it out, she assaulted the officer. He didn't arrest her. He didn't do anything, as a matter of fact. They said, "We have to come in and check the place out." Then she immediately said, "He's sleeping." The police officers entered and they checked. They didn't find any injuries on him. She had been throwing all sorts of stuff, and I think they were both drunk. However, it was amazing to me that the police officer did not charge this woman when he was assaulted by her. He has that in the report. It says there that he was assaulted by her in a domestic violence situation.

In talking with many officers of the Peel Regional Police and Halton police etc, they state quite frankly to me that politically this is to be treated as wife assault, not spousal assault, and there is to be a substantial amount of emphasis put on arresting the man. There is a big problem there with that discrimination, and you're discriminating against children as well when you do that. There's already a substantial problem here for children in all of this circumstance.

I find it amazing that we can sit here and claim this tremendous epidemic of domestic violence when you look at the statistics and see that under 100 spouses, girlfriends, whatever, are victims of domestic violence in Canada during a one-year period, and 25% to 41%, over different years, have been men, yet we ignore that problem. When you look at the 1993 report from Stats Canada, they talk about wife assault: in 1993, 59% of the victims of domestic violence who died, who were murdered, were women. They don't even talk about men. Who were the other 41%?

This is the attitude that I find in all these police forces. The officers have found tremendous political pressure, and this is damaging the kids. I think this legislation further damages them, because it gives more weapons to angry people who want to hurt their spouses, and since 90% of those with custody are women, which is a phenomenal figure, this is the ideal weapon to go and destroy your spouse if you're angry for whatever reason. If you want to get back at him and you're vindictive because he was cheating on you or whatever, then this is the case.

I have heard from a long-time friend who works in a shelter east of here who has told me that she has personally witnessed women who work there counselling other women to phone the police and have this guy charged with a fictitious crime, to bruise themselves someplace, and therefore make false allegations, which are rampant. When you have two people who are in a separation or a divorce situation, that's a terrible thing to go and do, but hatred will do these kinds of things.

The problem for the children in all this is that when you eliminate parents from their lives instantaneously, without due process, or you have a limited process like you people have here where it's a negative onus—you're guilty until proven innocent, according to your suggestions, and you have a limited time to respond to this—in my opinion it's insane. I can't believe we're going to convict people first and ask questions later; that's what this attitude amounts to. It's incredible that anybody can go and do this.

1700

The problems that we already have for children are substantial. Boys in particular have had all sorts of discrimination. We don't have enough male teachers in primary grades. There's a substantial discrimination against them. They're deathly afraid of someone accusing them of touching someone or whatever. There are a number of issues here regarding boys in the schools who are discriminated against. When they get these ads coming across that men are perpetrators of all this crime etc, whether the stats show that or not, they feel very badly about this.

We have a situation now where the number of boys leaving high school and not completing versus girls leaving is much higher. I don't have the figures with me, but I have the statistics in my office. Something like 10 times as many teenage boys commit suicide as teenage girls. Amazingly, the largest group that commits suicide in our society is white males over 40. These aren't my figures. I've got studies from Harvard and there are a number of different studies on this. When you run rather graphic ads and nail men, you're also nailing boys.

When it comes to children's welfare, we look at agencies which are social service agencies that are there to help the family. The children's aid society is there to appraise the situation, to take whatever steps are necessary, but their first step is not to go in there and just wipe out the relationship with that child. They take very important steps in justifying what they're doing, interviewing everybody and taking a look at the situation, documenting this, before they ever say the child should be taken away from the parent. Yet you're proposing legislation that just says, "One parent wants it; just phone it in." That's a bit of a problem.

In my own situation, where I was a victim of domestic violence in 1991, I think this would have been a terrible weapon for me to use if the police would have done anything about it. I had problems with the police then. When I phoned 911 after my ex-wife broke into my house and wanted to take the children from my custody

and started a very brutal fight with me—I was bleeding in three different places and I was very black and blue—they didn't believe me at first. Then they came out with all the squad cars and took her out of my living room. As a man, I have to turn around and say, "Oh yes, I'm very manly. I played football in college on a varsity level first team and I boxed for two years. Yes, I could have hit her in the face and driven her nose through her skull or something." I didn't do that. I tried to minimize the situation as best I could and tried to hold her. She got away. I was the only one who had injuries.

The kind of discrimination we're facing in the courts and with the police is phenomenal. Right after that we had a family law assessment done, and the assessor gave us a slight change in the times, but she never consulted me. She goes on about this woman's anger. She didn't talk about any anger that I had. Then she turns around and says that this mother has denied access to my oldest daughter and then proceeds to go on and say, "If the parents can't get along, the mother should get custody."

The Chair: Mr Wilson, you are getting into details of a specific case. I should caution you that, while members enjoy parliamentary privileges and certain protections pursuant to the Legislative Assembly Act, it is unclear whether or not these privileges and protections extend to witnesses who appear before committees. For example, it may very well be that the testimony you have given or are about to give could be used against you in a legal proceeding. I caution you to take this into consideration while making your comments.

Mr Wilson: Thank you.

There are a number of statistics which I would like to bring to your attention. I think that when we look at the children involved in all these situations, we should be looking at different ways of dealing with this, giving a stronger weapon to try to—it's going to cause conflicts.

I know of a case where I was assisting one of the parents and he went out and murdered the woman and killed himself. I know and I can prove, with my conversations with the Peel Regional Police, that the reports in the Toronto Star were false. In fact, if you read all the reports from start to finish that appeared in all the articles you would see there are major contradictions. You would find, if you had the truth, that this was a decent man who had never been in trouble with the law, who was the primary caregiver of his child and who had amazing amounts of documentation to this effect from family doctors, day care, after-school programs, teachers, sports coaches, etc. This child doesn't have a mother or father any more because there were false allegations against him that he had left his son abandoned etc that this woman made to the Peel Regional Police. Then, finally, to get him out of the house, to close down his business that was in the house, she accused him of threatening her life. This was a decent person, an usher at the church around the corner, who went out petitioning for traffic lights to go up at the end of their street, a very decent person who lost it. This wasn't an anger problem he had, this was a psychological one. I think there was a

problem there, when you feel so grossly violated by having the police pick you up and take you to jail. It is inconceivable that this person could even go to the police and make up these false allegations. He probably lost it and went and killed her and killed himself because of it. Yet, when we read about him in the paper killing his ex-wife and himself, we see him as Mr Angry. Yet, when a female doctor can go out and kill her child—

The Chair: Mr Wilson, could you wrap up, please?

Mr Wilson: When we see a female doctor go out and kill her child, we say she must have had some psychological problems or there were things going on and this was somebody who needed help.

In conclusion, I would say it's very important to look at this not from a law standpoint, that we can't get restraining orders that are just controlling enough, we can't really hammer these people enough, but maybe we ought to look at this and say this is more of a social problem. We should have qualified counsellors and social workers who are familiar with these issues, who are perhaps older and have had kids and raised them etc, who can evaluate these situations better, so that people can call at an earlier stage, so they're not afraid of losing the relationship with their spouse because somebody shoved somebody else or spoke some harsh words.

The Chair: Thank you, Mr Wilson.

Mr Wilson: There should be a time when they can phone and get social assistance help, where somebody can evaluate this family, what their needs are—

The Chair: Thank you, Mr Wilson. Your time is up.

The next speaker is Marion Wright, legal advocate for Women's Place, St Catharines.

Mr Wilson: Are there any questions?

The Chair: No questions. Your time has expired.

Ms Lankin: On a point of order, Madam Chair: It might help just to remind folks how much time they have and that they can use it all for their presentation, but if they want to have any questions from the committee, they need to leave a little bit of time.

The Chair: Yes, I did say that, actually, at the beginning, and I will repeat that. You do have up to 20 minutes in which to make your presentation, and if there is time there will be questions within that 20 minutes from members of committee.

Mr Kormos: Also that there's coffee and tea there. It's not just for us.

The Chair: Thank you, Mr Kormos, for your editorial comment. You're cutting into the presenter's time.

1710

WOMEN'S PLACE OF ST CATHARINES

The Chair: Good afternoon, Ms Wright. Please proceed.

Ms Marion Wright: Good afternoon. As you said, I'm here representing Women's Place of St Catharines, which is a shelter for abused women. I'm a lawyer who works there as a legal advocate. I assist both shelter

residents and non-residents and ex-residents in the community.

There are several aspects that are positive regarding Bill 117. These include making breaches of intervention orders a criminal offence, allowing the applicant to apply for exclusive possession of the home regardless of whether they are married and allowing those in dating relationships to qualify for intervention orders. However, there is of yet, that I'm aware of, no definition of what a dating relationship will be. I would like to use my time today to discuss just a few of the problems I foresee with the implementation and administration of Bill 117. As I'm sure you are aware, how the law is administered can completely change the actual intentions of those who drafted it.

First, Bill 117 allows for emergency intervention orders. While in many ways this sounds very positive, there are already provisions for emergency motions during the court hours that are not utilized. The family law rules that apply to the Family Court of the Superior Court of Justice and the Ontario Court of Justice allow for emergency motions. Specifically, rule 14(4) allows motions before a case conference in a situation of urgency or hardship or for some other reason in the interests of justice. There are also provisions in rule 14(11) for motions without notice when there is an immediate danger to the health or safety of a child or of the party making the motion and the delay involved in serving a notice of motion would probably have serious consequences.

Even with these provisions it is extremely difficult to get a motion for an emergency during court hours because the interpretation of what constitutes an emergency has been very narrow. Even if you are granted a motion without notice, it may be days before a judge looks at your matter and actually comes to a decision. My concern is that the same interpretations are going to be applied to Bill 117. If a woman is currently having difficulties getting a motion during court hours, I suggest that there's a strong possibility that it will be equally unlikely that the matter will be heard in the middle of the night by a JP or by a judge. Furthermore, the order will mean absolutely nothing until the respondent is notified of its existence and there's no guarantee as to how quickly this will happen.

In addition, what about the cases that aren't deemed to be an emergency? In some jurisdictions that have the Family Court of the Superior Court of Justice, your first court date is more than three months away. That date is often just to appear before a clerk to set a date for a case conference, which could be another month or more in the future.

Another example of legislation or regulations not being used the way they are intended has resulted in abused women being forced to attend court appearances even where they have a lawyer representing them. According to members of the Family Rules Committee, provisions of the rules were to be used so that women did not have to attend court or if they were forced to attend

they could be in a separate room or telephone or video conferencing could be utilized. Unfortunately, in the jurisdiction where I work, women are being told by their lawyer that they must come to court and therefore be in the same room with their abuser and face the intimidation and risks to their personal safety that come along with this. Their lawyers don't ask the court for any of the available alternatives even in the most extreme cases. We allow men under probation, bail or restraining order conditions to stand outside the courtroom and sometimes even display intimidating behaviour in the courtroom. If this same behaviour occurred on the street it would be a breach of the order. This is not what was envisioned by the rules but apparently it is what will be faced by women seeking intervention orders.

One of the ways to try to prevent legislation or regulations from being misinterpreted is to ensure that there is continuing education for justices of the peace, the judiciary, lawyers and other administrative personnel involved in implementing and applying the legislation on a day-to-day basis. Examples of why this is needed include women being advised by their lawyer to remain in the matrimonial home with their abuser during the judicial process without any assessment of the risk to their client. It is also not uncommon to find lawyers or the judiciary who do not specialize in abuse cases minimizing the abuse suffered or asking questions indicating that they must have done something to deserve the abuse. They also fail to recognize the signs of abuse or the escalating behaviour of the abuser. Without continuing education to rectify these problems, Bill 117 could easily be misinterpreted and applied without an understanding of the dynamics of domestic violence. This will result in another piece of legislation that is of no use to those who it was supposed to assist and therefore perpetuate the feeling of the majority of abused women that it is better to avoid the judicial system all together.

Another major problem will be with the ability of women to access Bill 117, as has already been mentioned in previous presentations. How are women going to know what the provisions are and who is going to assist them in accessing the provisions?

There are some services available during court hours, although not nearly enough, but there is nothing available after court hours. Women's shelters are underfunded and short-staffed. There is no one available in the middle of the night to assist with any paperwork that may be required or accompanying a woman to a hearing or support her while she is on the phone with a judge. If you qualify for legal aid, it takes weeks in the jurisdiction I work in to even get an appointment, let alone a certificate. If you already have a lawyer, few are going to be reachable in the middle of the night. While it is possible to access the law without a lawyer, it is more difficult and definitely more intimidating.

When the Family Rules Committee introduces rules governing the application for intervention orders and emergency intervention orders, are they going to account for women who do not qualify for legal aid but cannot

afford a lawyer? Are they going to consider the specialized needs of abused women? Will the rules be user-friendly and will they be followed by all jurisdictions? I can tell you that currently the rules in effect are not followed in all jurisdictions. Furthermore, will the Attorney General use his power under section 18 of Bill 117 to require the Family Rules Committee to amend or revoke a rule that is not working, or once this bill is passed will it be forgotten in favour of the next bill on the agenda?

If women cannot access the provisions in Bill 117 and have no support in doing so, then it will not be useful legislation. We can only ensure that this does not occur by putting supports in place such as more legal aid funding and funding for advocates to assist women to access the provisions in the legislation and to educate them as to its existence.

I am also concerned about the court that will have jurisdiction to hear these matters. In areas where there is not a Unified Family Court, which is also known as the Family Court of the Superior Court of Justice, women are going to be forced to go to the Superior Court of Justice even when there are no property issues. You must remember that in some jurisdictions these courts have no duty counsel and no advice counsel, whereas in the Ontario Court of Justice you do have these things. Furthermore, is a woman who has already started a proceeding in the Ontario Court of Justice and then decides she needs to apply for an intervention order going to be forced to apply in the Superior Court of Justice if it's not an emergency and therefore have proceedings in two courts? This again would be an extremely intimidating process.

The last issue I'd like to discuss is the enforcement of intervention orders in general and also the enforcement of the financial and property provisions in the legislation. If a woman is able to successfully get an intervention order, it means nothing unless it is enforced. Currently, the enforcement of restraining orders under the Family Law Act is a problem. While making it a criminal act to breach an order is definitely an improvement, there still are concerns regarding the police actually laying a charge for a breach. If the police do not lay the charge, the breach never makes it into the criminal justice system and the abuser is never held accountable in the criminal courts. Furthermore, the court must attach a significant penalty to a breach of an intervention order, not just another piece of paper that will not be followed or enforced. Mandatory minimum sentences in these cases would certainly be a step in the right direction and may also make society realize that these orders actually mean something.

With respect to the financial provisions in intervention orders, such as an order requiring the respondent to pay the applicant compensation including moving and accommodation expenses, I see two problems. These provisions are not available in emergency intervention orders, and non-emergency orders, as I have already indicated, could take many months to get to court.

Therefore, while there are provisions restraining the respondent from converting, damaging or otherwise dealing with property the applicant has an interest in, the property could be destroyed long before the matter ever gets to court. Also, if there are no expedient provisions to get and enforce these orders regarding assistance with rent, mortgages and other daily expenses, then women are at risk of losing their homes. I do not know how the provisions in Bill 117 regarding bonds and recognizances will work; however, there should be specific guidelines for the judiciary to follow. Otherwise, some judges will not even use the provisions. The consequences of breaching an order should be immediate. I deal with many women who have court orders in place regarding financial assistance with the upkeep of the matrimonial home who never receive a dollar.

1720

The consequences of failing to pay child support is a perfect example of a system that continues to fail. It is often years before any enforcement proceedings are initiated, and many available provisions, such as jail time which could be served on weekends so as not to affect the payer's ability to work, are completely ignored. Abusers know how to manipulate the system and they will do the same thing with this bill. The financial provisions of the bill, if breached, are not going to be considered breaches of a criminal nature. Perhaps we should be asking ourselves, "Why not?" Abusive men will continue to be abusive even if the applicant is granted an intervention order by leaving the applicant destitute, unable to take care of her children and with no one to effectively enforce the terms of the order. The legal system, society and the government stand by every day while this continues to happen. Women know the failures of the system and often decide that they cannot turn to the legal system for assistance because it has nothing to offer them.

In conclusion, you must understand that Bill 117 consists of several pieces of paper that could be successfully implemented to make a difference for some victims of domestic violence, or it could become another law that is of no assistance. Being a lawyer, I often get asked by those I work with at Women's Place in St Catharines what is wrong with the judicial process and why it does not offer any useful assistance to abused women. One of my first responses is that there are provisions in several acts that could be used to assist abused women but they are not administered in such a way and therefore they become part of the problem instead of part of the solution.

Without vigilance in tracking how Bill 117 is being administered and enforced and taking immediate steps to intervene where there are problems, it will become just another act that does not make a difference. The only way this can be done is with a commitment to follow up with women's groups and advocates as to how the bill is working, what needs to be amended and what additional supports need to be put in place.

The Chair: That's your presentation? Thank you very much, Ms Wright. Questions starting with Mr Kormos. You have about a minute and a half.

Mr Kormos: I appreciate your comments about the enforcement provisions, because they are very confusing, Mr Tilson. The implication is that you don't want to use the application of section 127 of the code for breaches of conditions 9 through 13, yet it seems to me that in fact you could. It's not clear in that regard. Maybe that is your intention but the intention isn't articulated, and I think that's what your observation of it is.

Ms Wright: Yes, my reading of it is that's not the case.

Mr Kormos: You say that police officers shall enforce provisions 1 through 8, but my suspicion is that the only way police officers without more explicit instruction are going to enforce any of these provisions is to simply lay a charge under 127 for breach; to wit, "requiring the respondent to vacate the applicant's residence." I suspect that police officers may charge a person and use their arrest powers to remove that person from the residence, but very few police officers are going to want to involve themselves, for instance, in doing the job of the proverbial sheriff in removing somebody from a building.

I appreciate those comments and hope the PA—we've got to address that during clause-by-clause and we'll certainly be speaking to it, because I think you're dead on. You know what you're talking about.

The Chair: You've got about 20 seconds if you want to comment on that.

Ms Wright: I think that's exactly correct. My biggest fear is that we're going to have this great piece of paper but a year from now there are going to be no differences. I'm in a position to say that from the fact that I work with this every single day and often the people who are administering the bills don't, and that can be a huge problem.

Mr Tilson: You made a comment about section 2 with respect to one of the applicants under a dating relationship and you were critical of that. Have you got a suggestion to the committee as to how that could be amended to improve that definition?

Ms Wright: My criticism is that there appears to be no definition. What are we going to say a dating relationship is?

Mr Tilson: That's what I'm asking. Do you have a suggestion as to how to improve that section?

Ms Wright: My suggestion would be to define it clearly. Is it going to be—

Mr Tilson: You don't have one.

Ms Wright: Are you going to put in one date, if you've seen the person one time? I'll tell you what's going to happen. A judge is going to get hold of that and define it, and that's what we're all going to be stuck following. Maybe it will be a good definition, but maybe it will exclude many women.

Mr Tilson: You talked about the slow process of the courts. One of the several purposes of the bill is to deal

with an emergency intervention order, as you know, under section 4. You proceed through that and you don't need to go to court. You can get a designated justice of the peace, for example, who are the only ones who can deal with these things 24 hours a day. So in all the matters you're talking about, I quite appreciate the slowness of the court in the other areas, but that's what I think is one of the good things of this bill, that you can get good service to people who have been violated by domestic violence.

Ms Wright: That's true, but my question again is, what happens if the justice of the peace, the judiciary, doesn't define emergency the way I would define it? What if they continue to define it the way they do now, which means good luck in getting an order?

The Chair: You don't have the chance to comment on that, Mr Tilson, unfortunately, because we're running close to our limit. Mr Bryant.

Mr Bryant: You'll get a chance in the Legislature, I know, to comment on that. I have two questions. Firstly, any other amendments that you would suggest? Secondly, you said that not only might Bill 117 in effect be useless if it's not implemented, but it might actually be harmful. If you could just tell us why that's the case.

Ms Wright: With respect to other amendments, no, I would just like to see more specific provisions because of the danger of not having them. With respect to the bill being harmful, just the very thought to women that there's another piece of legislation that is supposed to be out there to help, and if it falls apart it's another reason to stay away from the court system. I spend a lot of my time trying to convince women, "Let's give this a try," and I can't blame them when they say no. If this falls apart it will be another reason why they will not consider using the judicial process at all.

Mr Bryant: Access to justice is obviously a huge issue that you've been speaking about. You've got the parliamentary secretary here. What recommendations, specific to domestic violence, would you suggest in order to be able to implement it?

Ms Wright: More legal aid funding, more training for and more duty counsel, advice counsel, more hours obviously on legal aid certificates—

Mr Garry J. Guzzo (Ottawa West-Nepean): Especially training lawyers.

Ms Wright: Absolutely.

Mr Guzzo: Starting with Kormos.

The Chair: Thank you very much, Ms Wright.

DURHAM REGION CUSTODY AND ACCESS PROJECT

The Chair: The next presenters, the Durham Region Custody and Access Project: Deborah Sinclair, consultant; Helen Brooks, lawyer; Donna Babbs, lawyer; and Kate Schillings, focus group member. Good afternoon, ladies. I'm just going to vacate the chair for one minute. Mrs Elliott will take over.

The Acting Chair (Mrs Brenda Elliott): Good afternoon and welcome. As you know, you have 20 minutes for presentation time and it is your decision as to whether or not you will allow time for questioning within that 20 minutes. Please begin.

Ms Deborah Sinclair: My name is Deborah Sinclair. I would like to briefly introduce my colleagues: Helen Brooks is a family law lawyer in our lawyers' working group in Durham region; Kate Schillings is Luke's mother and also a focus group survivor who's participated in our original research; Donna Babbs is chair of the lawyers' working group as well. I am a social worker who has been a long time in this work on the front line, since the early 1970s, and have had the privilege of working with Durham region over the last few years on this particular project.

We have given you some materials. I'd just like to go over them and make sure you've got them. The first piece, I believe, is the binder, *In the Centre of the Storm*. This is called "Durham Speaks Out: A Community Response to Custody and Access Issues Affecting Woman Abuse Survivors and Their Children."

1730

In this particular project, we had a number of focus groups with woman abuse survivors about their experience when they faced the family law system. Many of the women in our project had not had experience before with court—criminal or civil. The disclosure about their abuse came forward as a result of speaking out on behalf of their children in regard to custody and access issues. They would not have been picked up by a criminal system. They would not have disclosed. Many of them were experiencing emotional abuse for many years, and in some cases physical abuse that would have been useful for them to have prosecuted. However, they kept it private, like the majority of abuse survivors do.

One of the learnings in this project that has been very important to us is that emotional and psychological abuse can be just as life-threatening and injurious to a woman and her children as physical abuse. That has been a very tragic and very important learning for us in this project.

The other piece I would like to just briefly outline for you is that we do have some specific amendments that my colleague, Helen Brooks, will speak to regarding this particular piece of legislation before you.

In addition to that, we have an action plan that we have presented directly, face to face, to the Attorney General, which I believe has been happily received. It's included in this package. We'll be happy to speak to any questions, today or later.

We're very happy to be a part of this process. We've been a part of the whole process around this particular bill since the beginning. We have had representatives sit on the task force from Durham region, the original task force on restraining orders. We were one of the four communities that were chosen in the province to have all-day consultations on the bill. We, and different members of our community, have met twice face to face with the minister and his staff, as well as participating today.

Also, we've participated in giving feedback on the draft recommendations. We represent more than 225 people in the community. Professionals, judges, lawyers and police officers participate in all of our committees, as well as women abuse survivors and their children.

We believe this is a step in the right direction. We also are very cognizant of the fact that there are a number of recommendations that have been put forward in other reports that we fully support and endorse, although we'll speak more specifically to this draft.

We support our colleagues who spoke previously: Vivien Green, Eileen Morrow, Beryl Tsang. We would reiterate much of what they've said, and you'll find that in our report.

I'm very aware of the time. I think perhaps, Helen, you would like to speak to the amendments specifically.

Ms Helen Brooks: Yes, I can.

Ms Sinclair: And then we'll have Kate speak afterwards.

Ms Brooks: This is the first time in this province that there is a legislative definition of domestic violence. This statute is an immensely progressive step for victims of violence, but if this province truly intends to protect all—and not selective—victims, the definition of domestic violence must be fluid and capable of expansion, and there must be legislative direction for the courts to recognize emotional abuse. Otherwise, this province will only serve to protect part of its victims, those who are threatened by some physical gesture or act. If there is no definition of "act," then the ordinary dictionary meaning will apply. In my handout, there is a copy of the Webster's Dictionary definition of "act."

None of us in this room know the offender as well as the victim, and even then some victims have misjudged the danger or risk to themselves and have been hurt or killed. For those victims who truly know they or their children are at risk, having experienced what the offender can do or is capable of doing, they need the government's protection as much as, if not more than, the victims who can point to a black eye or broken arm. Those victims are easy to identify. Emotionally abused victims should not need to wait until an "act" occurs before getting protection. The responsibility of this government is to ensure that all victims can be protected.

In the handout, there is a summary of the amendments we propose in order to expand protection to the victims of domestic violence. I intend only to briefly highlight three of those.

We suggest that it would be helpful in the statute to include a preamble. It's been done in other legislation. We've put in a suggestion as to what the wording might sound like. Our reason for making this suggestion is that those who are in authority to issue intervention orders ought to have the benefit of understanding the general framework within which to interpret various passages of the legislation in a manner that's consistent with the stated intent and purpose, and a primary objective.

As I indicated in my opening remarks, there needs to be a definition of "act," and we would suggest that "act"

includes any verbal utterances or verbalizations. I've enclosed in the handout an article by Mr Phillip Enright, a crown attorney with the Ministry of the Attorney General, suggesting that in certain cases emotional abuse can be the subject of a criminal charge. So in this statute it should be clearly identified.

If I could ask the members to look at the bill, subsection 1(2) under "domestic violence," where it states, "For the purposes of this act, domestic violence means," we're suggesting that the word "means" be changed to the word "includes." This permits the court wider latitude when interpreting circumstances and it is not as restrictive as using the word "means."

If I could ask the members to look at subsection 3(1), we're suggesting that clause 3(1)(b) be deleted in its entirety. The conjunctive use of the word "and" does not fit with the definition of "domestic violence" set out in subsection (2) even without our amendments. We believe clause (b) is an added burden for an applicant to not only prove on a balance of probabilities that domestic violence occurred, which in the definition suggests that the applicant fears for her safety, but then there must be a juridical finding, a secondary finding whether that person may be at risk of harm. The words "and a person or property may be at risk of harm" are redundant language when it's clear that all domestic violence in one manner or another places a person at risk of harm. There can never be acts of assault or abusive verbalizations that do not in some way place a person at risk of harm. Adding these words to the section of the statute suggests that there can be domestic violence without risk of harm, and this is sending a false message.

The handout also encloses an article I ask the members to eventually look at from the *Globe and Mail*, 1987. It was in the report entitled *Intimate Femicide: Woman Killing in Ontario, 1974*. A trained police officer was found guilty of negligence. He was an experienced, 18-year veteran who knew the offender was violent, knew that he was on charges of assault against the wife, but due to the wife's mild manner, he assessed the risk of harm as being low or no risk. She was subsequently fatally shot by her husband, and their daughter wounded.

The assessment of risk of harm, in our respectful submission, is best left to the experts, not to the courts on a summary application.

1740

Ms Sinclair: Kate, I believe you would like to share a few words. Kate has participated in our research project.

Ms Kate Schillings: I am grateful for the opportunity to speak before you today on this bill. My story is a difficult one to tell, but I continue to tell it in the singular hope that lasting and meaningful changes will come out of it, which is why I am here today.

In August 1997, I fled a severely emotionally and psychologically abusive marriage with my three-and-a-half-year-old son, Luke, in my arms and my purse over my shoulder. I escaped to a women's shelter, with my husband in close pursuit. Although I managed to get myself and my son to safety inside the shelter that night,

it was necessary for me to leave the next morning and go into hiding elsewhere so as not to compromise the safety concerns of the shelter.

One week later I was in court to establish interim custody and access. I had met with my lawyer several times before this court date to discuss the legal actions required to initiate a divorce, spelling out examples of the types of emotional and psychological abuse present during the years of my marriage and trying to articulate the deep-seated fear I had for my safety and the safety of my son.

Emotional and psychological abuse in my marriage was insidious by nature, creeping into the relationship very slowly and almost imperceptibly. It is difficult to explain how this entrapped me and how the deepening fear wore me down over the years. The most difficult thing is that there was no visible evidence of abuse: no broken bones, no bruises, no black eyes. Constantly present, though, was a very real fear while in the presence of my husband, a fear of not being safe any more. Because my husband's threats were very veiled and non-specific and always centred on our son, I was really very vulnerable. How could I get anyone to understand this?

I went into court that day hoping that here I would find the protection my son and I so desperately needed. In my affidavit I had asked for sole custody of my son and for supervised access for my husband's visits with his son. I made it very clear that in addition to the abusive behaviours, I strongly believed that my husband was severely depressed. He had exhibited many of the hallmark signs of severe depression and I was very concerned about his stability. For this reason, I had also asked that he be made to seek help as all my attempts to get him to a doctor had been fruitless. I was told this was not likely to happen.

I was granted sole custody but liberal and unsupervised access was ordered for my husband starting the very next day. Despite strenuous and repeated efforts on my behalf, my husband was still given unsupervised access. This was just the opportunity he was waiting for. He brutally murdered my son, first strangling him and then setting a fire in which my son's body was burned beyond recognition. He destroyed much of the marital home and also took his own life in the process. He came through on his threat not to let me leave with my son.

My assertions of abuse were absolutely secondary to the following three factors: the process of mediation at all costs between the two lawyers. I was told that it would be better for me if the judge did not have to decide the custody and access outcome. I was warned that I needed to be more co-operative, that my protestations would be considered in determining final custody and access months down the road. I never even saw the judge during any of my proceedings. The second thing that became more important than my assertions of abuse was the right of my husband to see his son. He came to court and presented himself as a very affable and likeable fellow. The third thing was the fact that my husband had no

priors before the court. With no visible evidence of the abuse and no paper trail, it came down to my word against his.

If the protection housed in this draft Domestic Violence Protection Act had been in place three years ago, the outcome of my case might have been very different. It might have looked like this: my assertions of emotional and psychological abuse would have been heard. A risk assessment would have been ordered. Mediation would not have been an option. My husband would have been ordered to seek help. My husband's sister, who had only seen us as a family about three times in five years, would not have been asked to vouch for his ability to care for our son. I would not have had to sit in the same room as my abuser for six long hours, further contributing to my already weary and terrified state. Supervised access—possibly no access—would have been ordered pending my husband entering into treatment for abusive behaviours and for depression. The safety of myself and my son would have been paramount. My voice would have been heard and my son would be alive today, almost seven years old and in grade 2.

I cannot begin to tell you of the enormity of the pain, how I miss my son every hour of every day. My voice was stifled in that courtroom and my son paid the price with his life. Please do not let it be stifled here. Please continue to listen to all those whose experiences you cannot begin to imagine. The past three years have been spent moving through the pain of losing my son, especially by the hands of his father. It is only recently that I have recognized that now I also need to start dealing with the abuse that was a constant in my life for so many years. Only then can I rebuild my life.

I leave you with this today: On the day of the memorial service for my son, my husband's lawyer came to me, clearly burdened, and whispered, "That is not the man I spent six hours with," and I replied, "You're right; it's the man I spent eight years with and nobody listened to me."

Thank you for hearing us today.

Ms Sinclair: Thank you very much, Kate.

Ms Donna Babbs: Kate's story, we want to reiterate, has extreme importance to the definition of domestic violence.

Mr Kormos: Madam Chair, on a point of order, excuse me: We've got a vote. We're coming back here at 6 o'clock. We want to carry on. I wonder if the Chair would consider putting to these folks if they could stick around for 10 minutes while we go and vote.

The Chair: Mr Kormos, with respect, the difficulty is that some of us are not able to come back for more than 10 or 15 minutes after the vote. So may I suggest, if you could please wrap up. I know this has been a very emotional submission, but we do have another delegate. We have to go and vote in about eight minutes. So if you could please wrap up.

Ms Babbs: Two minutes of our time has just been taken up, so if you don't mind, may I have the additional two minutes?

Mr Kormos: Of course.

Ms Babbs: The definition of domestic violence is based on the criminal law definition primarily. It does not deal with emotional abuse. That's why we ask that you review the submission prepared by Helen Brooks which deals with the definition of domestic violence; why it needs to be expansive and not restricted to mainly physical assault; why the definition of "act" has to include verbal acts. We ask that you review the report and Kate's story, which is spelled out there in further detail, where you'll see examples of emotional and psychological harm. We ask that you listen to Kate's story and realize that Kate knew the risk of harm that she was in. A judge may not see the risk of harm.

We ask that you seriously consider our proposal that the second part of clause 3(1)(b) be deleted, because when there's domestic violence there is a risk of harm. We can't have that restricted by allowing judges and justices of the peace who don't have experience in domestic violence to make that assessment.

We ask, in all the submissions you hear, that you consider the importance of life, liberty and security of the person, which is in the Canadian Charter of Rights and Freedoms, and that you err on the side of caution, let these orders be made and worry less about trampling on the rights of potentially very dangerous individuals not being removed from their homes.

The Chair: Thank you for your submission.

Members of the committee, are you saying that you want to go and vote now and then come back for the full 20 minutes? I believe some of you can't come back for the full 20 minutes. Is that correct?

Mr Tilson: I have to leave.

The Chair: We have about 90 seconds to get up to vote. Can we at least hear for five minutes from the last delegate, please?

Mr Bryant: You want to have three minutes?

The Chair: Five minutes.

Mr Tilson: We have to go and vote.

The Chair: All right, that's fine. I was going to say you have five minutes.

The committee recessed from 1750 to 1805.

MOTHERS FOR KIDS

The Chair: Sorry to keep you waiting. I hope Ms Bountrogianni will be back.

The next delegation is Maxine Brandon from Mothers for Kids. Sorry to keep you waiting, Ms Brandon. You heard me earlier. You have 20 minutes in which to make your presentation and for questions to be asked.

Ms Maxine Brandon: Good afternoon. My name is Maxine Brandon. I have a background in psychiatric nursing, teaching, social work and, recently, mediation. I am here today to represent Mothers for Kids and to discuss the concerns regarding Bill 117.

Mothers for Kids is a group of about 50 non-custodial mothers who have lost custody of their children through the process of the legal system. Mothers for Kids

advocates for the interests of children and are concerned about children's issues in our current legal system whereby the children do not have any individual rights, nor do they have a voice. This group is also focused on women as mothers and the distinct role that mothers provide their children in their development through childhood to adulthood.

Mothers for Kids is committed to finding better solutions for children other than the current court system, lobbying for changes to the Divorce Act, advocating for automatic shared parenting where there is no kind of abuse in existence, advocating for mediation and rehabilitative solutions rather than children being the innocent victims of the divorce industry. The belief that children need both parents is that mothers and fathers provide their children with different and distinct role models necessary to equip them for the challenges of adulthood.

Domestic violence: we know that domestic violence causes great trauma to all concerned—to men, women and children and within our communities—yet we allow this in society. We are all to blame. The constant visual assaults of the daily ingestion of rape, drug use, murders, violence and pornography to adults' and children's intellects alike are experienced through the television, newspaper, radio and movie industries.

We will put a ban on cigarette smoking due to health reasons and public outcry, yet we will not put a ban on violence in our society to protect the mental health of our individuals and our children. Is it any wonder we have so much domestic violence, young offenders and increases in incarcerations in our courts and prisons? Children live what they learn. Violence must not be learned as an option for problem-solving and conflict resolution.

Although Mothers for Kids agrees that there should be an act to better protect victims of domestic violence, we ask that Bill 117 not be passed. We ask for the re-examination of the bill to be completed and that the act be rewritten following submissions.

We are concerned that the act as such will cause an increase in domestic violence, an increase in psychological abuse to its victims and also an increase in legal abuse generated in the court system, all of which could revictimize and increase the victimization of the victim or result in more physical assaults or murders and suicides.

Specifically, Bill 117 has flaws which need to be addressed. Under "domestic violence," subsection 1(2), the bill does not define what an "omission" is, leaving this to wide interpretation or punishment.

Bill 117 is strictly punitive and punishment-oriented, failing to provide funding or looking to provide for preventive, educational and rehabilitative models in our communities. The bill is reactionary to the recent number of domestic homicides and suicides and is not completely thought out as to whether it would de-escalate domestic violence or whether it is likely to increase domestic violence, homicides and suicides.

1810

The bill provides a financial incentive for abuse and also that of psychological abuse by the individual who seeks power and control or revenge against the other and then can manipulate the bill and the legal system to their advantage by use of their lawyers. What can be used against one can easily be manipulated to be turned around to attack the victim. Once drawn into the adversarial court system, one cannot get out of it. Cases have been known to go on for four to seven years or any length of time before bankruptcy, ill health or poverty stops the battling—in this case maybe death or suicide as well, or homicide.

There's no such thing as truth in the judicial system. This is a shock for many of us to learn. There is only evidence and the weighing of such. A skilled lawyer is much like an artist painting a picture on a canvas before the judge. The scene can be altered by the application of, in an artist's case, paint, but in a legal case, stacking affidavits, where one enters into a paper war of either true or false allegations, the use of highly charged adjectives to enrage the other side, and the legal manoeuvring and strategies to overpower one of the individuals. One cannot believe what happens in the judicial system.

All 50 women in our group have experienced legal strategies and manoeuvring and also, in most cases, psychological abuse through their ex-spouses or through the use of lawyers. Men and women who have left marriages due to reasons of psychological abuse find that now they are being re-abused in trying to obtain a divorce and the custody of their children. They now find themselves experiencing three avenues of abuse and trying to naively fight against it: abuse, both current and prior, by a spouse; abuse by legal manoeuvres from one lawyer to another within the case; and system abuse.

The same applies to men as it does to women. The victim can be re-victimized by the system and by the aggressor or abusive individual. The laws can be manipulated in an adversarial system. When your finances and your children are used as bait to win or lose, with lawyers acting as your broker, psychological abuse occurs.

Bill 117 does not address the different types of abuse or their severity or the different applications for recommendations or rehabilitation. It only addresses physical abuse. There are many different causations, factors, precautions and remedies in different types of abuse. There is abuse from mental illness problems, either treated or untreated with medication, diagnosed or undiagnosed; there is financial abuse; there is social and cultural abuse—for instance, the threat to destroy an immigration status by someone entering the country; there is psychological abuse, which is very difficult and hard to prove but more damaging to the individual, their soul and spirit; and abuse from the person who is drug-addicted or alcohol-addicted. The bill does not address these issues and has only one remedy: a punitive, punishment model.

Punitive measures do not always work. They can create more disturbance, more deaths, more homicide or

suicide. Because Bill 117 is so punitive in its nature, it will only create more reason for those who are abusive in nature to abuse and give them more reason or impetus to rage, act out or go ballistic. When one has a real or imagined threat against them, for whatever reason—a paranoid cocaine user, an alcoholic or those with mental health disturbances—the thought of increased threat or threats or more losses such as your home, your family, your children, your money, and penal sanctions against you, combined with the adversarial legal system, is like putting a match to the July 1st fireworks.

Models of intervention must be carefully examined, not in haste and not in reactionary speed but with careful planning to look at the effects and side effects of any law to be implemented as well as the effects legally. Finances must be in place to provide necessary preventive, educational, emergency settings and rehabilitative resources to accompany acts of law such as emergency small furnished apartment programs for men and women to chill out, with 24-hour councillors in place to start counselling while providing immediate shelter and safety to those who need it.

Educational models within the schools to deal with domestic violence and the effects on children, and for the children to receive specialized counselling, should be in place, as well as medical training for physicians to ask about abuse automatically as part of the physical yearly examination and at every medical appointment, and to request their patients to have a yearly spousal, marital or common-law checkup.

These things could be implemented easily. There should be telephone hotlines so the community can also report domestic violence before the worst happens, so that potential problems can be monitored. Conflict resolution community intervention programs are needed. As a society, we need to lobby the media and the entertainment industry to lessen the violence and to restore spiritual, moral and ethical ways of dealing with conflict and strife and within the family unit. Violence should not be an option in dealing with conflict.

Within the legal system, ensure the use of mediation resolution services before entering court. Amend the Divorce Act to provide for automatic shared parenting unless there have been real, abusive situations occurring. You can't dangle a child before a parent and expect the parent to act properly. These are their heritage, their rights, their family. You can't use children as pawns in the divorce industry to gain money for lawyers' pockets. You can't do that to people. People are good parents, generally, unless found otherwise. To take a child from one parent and give it to another is child abuse itself.

We are just now understanding 25 years of documented studies where children have been taken from one parent or another through divorce or separation or death and the long-term rejection effects, loss of self-confidence, loss of relationships that they have in their own life and in their own marriages, and all sorts of problems that they're having.

The threat and thought of anyone losing their child as a parent should not be dangled in front of them by the divorce courts. To capitalize on self-employment through the use of children used as pawns between parents is wrong. The rumours of horror stories of divorce and custody battles and inequities and bankruptcies have already reached us before we've ever been to divorce court. Unfortunately, most of the stories about lawyers, divorce and the legal system are true. Read the divorce from hell: \$250,000 later and bankruptcy, he hands his children back to a taxicab driver and says, "I can't take it any more." Why should any of us, or you, go through that?

There must be changes within our legal system itself and in federal and provincial legislation to reduce domestic violence and not perpetuate it. Children should not be used as weapons against their parents in court. People rage at the thought of losing their child and everything they've worked for in life. How are we perpetuating that domestic violence? There must be preventive measures in place to help couples separate and divorce without going into the court arena and losing everything. Shared parenting would be a start in reducing the conflict, animosity and the violence that results from this. There must be some sort of accountability for violence in this system.

Bill 117 will influence family law, civil law and criminal law, but with what effect? I believe that this law is discriminatory to landlords and also to the individual in the total effect of this bill on their lives. How many civil action suits will there be by the abuser against the landlord for discrimination and against his individual rights under the Charter of Rights and Freedoms? It is interesting that the onus comes down to the landlord and not the Ministry of the Attorney General, with the landlord being sued, perhaps, by the abuser and perhaps ending up losing his own shirt in the matter.

Punish the individual for the crime, but do not punish his or her whole life.

1820

How does Bill 117 differentiate between the Criminal Code on assault and battery and assault charges? Which shall be applied? How do they interact? Will there be both family law and criminal law in effect and then a civil lawsuit in civil court? How is Bill 117 to be tried and tested? What effect will this bill have on the judicial system and their staffing resources? Courts are already backlogged. How will this affect police staffing and the enforcement of this act? What measures are in place to monitor and evaluate the domestic and community effects of such a bill and whether the effect of an increase in violence occurs or whether it decreases the violence? Are we sure this bill won't escalate the violence and give licence to reverse abuse?

The bill outlines the same protocol regardless of the severity of the domestic attack. Should the same protocol be used and applied to a pinch as to a homicidal threat? The bill does not take into account the degree or severity of the assault.

The bill does not take into account the factors involved in certain types of domestic violence: who started it, who's right, who's wrong, or if the act or acts were witnessed by the police or not. If they were unwitnessed, was there any police bias in the police report? Was there any involvement of both parties? If so, were they both charged? In less obvious cases of domestic violence, does the best storyteller get the story to the police and to the judge? In court, we have often seen "the sky is falling" syndrome. You can create a scenario whatever way you want in court. If it's on paper, it's deemed as true, yet there's no truth seeker in court.

The intervention order under subsection 3(1) gives the court powers to enact a final order based on the balance of probabilities and not on a burden of proof or reality or actualities. This may be discriminatory, prejudicial and lead to false accusations or reverse abuse in the legal system.

The Chair: Ms Brandon, you have a few more minutes to wrap up, please.

Ms Brandon: There is no doubt, however, that domestic violence does exist on many levels, for many reasons and to many differing effects. The need for community resources is great for both male and female genders. The bill is simplistic in nature to only involve the police and courts when this is a systematic societal problem, much larger than this bill.

The problems must be dealt with by a holistic approach involving all of the community and familiar aspects of intervention, such as churches, schools, medical practitioners, psychiatrists, specialized counsel-

ling for domestic issues and specialized courts for domestic violence.

If the proper financial assistance from the government were in place for community resources to meet the demand of domestic violence cases, both and female, we would not need such state intervention to base decisions on probabilities.

The bill is discriminatory in presuming that it perceives the abusive person as a bad parent when that may not be the case. It denies the assaulter access to their children when there may be no evidence of poor parenting and it may be the result of two adults in conflict for unassessed reasons or dynamics.

It places the blame on one party where the person still has not been properly assessed—

The Chair: Ms Brandon, if you want a 30-second conclusion, please.

Ms Brandon: The conclusion that Mothers for Kids have is that the bill should not be passed into an act as written. We would like a re-examination of the bill to determine whether the bill is prejudiced in any way and conflicts with the Charter of Rights and Freedoms.

We ask that the committee look at a new bill or revisions to the bill that would protect the innocent and also de-escalate violence and not look at increasing it, and involving the community and funding in working toward a better solution for domestic violence. Thank you.

The Chair: Thank you, Ms Brandon.

This meeting will reconvene tomorrow afternoon at 3:30 in this room, Tuesday, October 31, Halloween.

The committee adjourned at 1826.

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Mardi 31 octobre 2000

Standing committee on justice and social policy

Domestic Violence
Protection Act, 2000

Comité permanent de la justice et des affaires sociales

Loi de 2000 sur la protection
contre la violence familiale



Chair: Marilyn Mushinski
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Tuesday 31 October 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Mardi 31 octobre 2000

*The committee met at 1528 in room 151.*DOMESTIC VIOLENCE
PROTECTION ACT, 2000LOI DE 2000 SUR LA PROTECTION
CONTRE LA VIOLENCE FAMILIALE

Consideration of Bill 117, An Act to better protect victims of domestic violence / Projet de loi 117, Loi visant à mieux protéger les victimes de violence familiale.

The Chair (Ms Marilyn Mushinski): I'll call the meeting to order. Good afternoon, ladies and gentlemen. This is a meeting of the standing committee on justice and social policy to consider Bill 117, An Act to better protect victims of domestic violence. Delegations have up to 20 minutes in which to speak and in which questions may be asked by members of committee.

METROPOLITAN ACTION COMMITTEE
ON VIOLENCE AGAINST WOMEN
AND CHILDREN

The Chair: The first delegation this afternoon is the Metropolitan Action Committee on Violence Against Women and Children; Pamela Cross, legal director. Good afternoon, Ms Cross.

Ms Pamela Cross: Good afternoon. First of all, let me thank the committee for this opportunity to present you with my organization's submission respecting this very important piece of legislation.

My name is Pamela Cross. I am the legal director of METRAC, which is the Metropolitan Action Committee on Violence Against Women and Children. Let me briefly review the history of this organization with you so that you can understand the perspective we're bringing to this issue.

We came into existence in 1985. In 1984, there was a series of high-profile and particularly vicious rapes and murders of women in Toronto. At that time Metro Toronto was a legal entity, and the then commissioner, Paul Godfrey, was approached by a committee of concerned citizens, that had itself called the Pink Ribbon Committee, with the request that Metro establish a task force to look at the issue of public safety of women and children. That task force was struck and, as a result of its work, METRAC was created, that being one of the many

recommendations that came out of the work of the task force.

At that time, the mandate for METRAC was to reduce and eventually eliminate all forms of public violence against women and children. In the intervening 15 years, we have only expanded that mandate to include all forms of violence, both public and private. Certainly in terms of the bill this committee is looking at right now, it is much more within the field of private violence as opposed to public violence.

In working to fulfill our mandate, we've been involved in a wide variety of activities, including government consultations with respect to a wide variety of new legislation such as the criminal harassment legislation, gun control and sexual assault laws. We've also been involved extensively in community collaboration in the area of public safety audits. For instance, it's as a result of METRAC's work that the TTC has created designated waiting areas in subway stations and offers in-between stops for women during the night on its bus routes.

We've also been involved in the production of public education material on many topics relating to the issue of violence against women and children. We continue to collaborate in a very positive way with the Toronto Police Service, particularly with respect to the issue of criminal harassment. In fact, we just held a second highly successful conference last week, co-sponsored with the Toronto Police Service, with about 120 people participating, both front-line police officers and community advocates, where we looked at the whole issue of criminal harassment, how well the law works, how it could better be enforced and so on.

As I've already indicated, over the years we have expanded our focus to include the issue of violence within the family, specifically the abuse of women by their male partners. I want to say right now that none of us in our work at METRAC denies the fact that violence perpetrated by women against their male partners also exists. However, there are no stats in the world that make it clearer than those presented by Statistics Canada over the year that show that between 86% and 93% of victims of family violence are women, and that in about 90% of the cases the perpetrators are men. So it's very important, when we do our work, to apply that gendered analysis to the issue. There are women who abuse their male partners; they are in a very small minority. There are women who abuse their female partners in same-sex

relationships; those too make up a very small minority of the cases of family violence that come before the courts, that come to the attention of the police and so on.

In addition to METRAC's work in the area of family violence, I have a particular personal interest in the issue. Prior to my work with METRAC, I had a law practice in eastern Ontario that focused almost exclusively on women who had experienced violence. It was my opinion, based on the experiences of my clients and my observations of the court processes, that the law did not yet adequately understand the very real problems faced by women who were experiencing abuse at the hands of their partners or their former partners. My clients, unfortunately, were frequently disbelieved by everyone they met in the court process, from duty counsel to court clerks to legal aid representatives to the judges. Their stories of abuse were too often dismissed as a "ploy" to try to get the sympathy of the court with respect to a custody or support application, and this just wasn't the case. These were women with true cases of serious abuse, whether physical, verbal, emotional or a combination or those, and they were consistently disbelieved as they tried to put that information in front of the court.

Women who have experienced abuse and violence within their intimate relationships have long felt misunderstood and dismissed by the legal systems available to them. The creation of this new legislation is an important first step in the process of making wife abuse both visible and legitimate. I don't mean that to sound as though I think that wife abuse is legitimate. I mean that we need to legitimize the experience of women who have suffered through that kind of situation.

There is much in the legislation for which its writers should be commended. In particular, I would like to note the following:

(1) The distinction in section 1(2), paragraph 1, between acts of aggression and acts of self-defence is very important. Recent years have seen a marked increase in the number of cases where dual charges are laid. That's where police arrive at the scene of a domestic call. They are unable to easily and immediately determine which party was the instigator of the incident, so they make the decision to charge both adults. Often the woman has acted in self-defence and should not face any criminal charges whatsoever. So we really applaud the thinking of the crafters of this legislation in the fact that they noted the importance to distinguish between acts of aggression and acts of self-defence.

(2) Section 1(3) is a very important acknowledgement that many women who are abused by their partners never call the police. In fact, and you probably heard this in the earlier days of these hearings, women are hit an average of more than two dozen times before they make an initial call for outside assistance or intervention. Even when the police are called and a charge is laid, in a significant number of cases those charges are dropped or pleas to lesser charges are entered and accepted. In some cases the women, out of fear or coercion, do not testify or

recant their original statement to the police when they do testify, with the result that no conviction is obtained.

(3) Section 2(1), paragraph 4, is also very positive, inasmuch as it acknowledges that intimate violence can happen within a dating relationship. Sadly, the pattern of abuse is often set long before a couple marries or decides to cohabit. It is important to allow women in these situations to have access to the same protection as is available to women who reside with their abuser.

(4) Finally, the availability of both intervention and emergency intervention orders is crucial.

As it is written and as far as it goes, Bill 117 is a positive and very important step. However, the government cannot introduce this piece of legislation and believe that it has addressed the issue of violence against women or ensured the safety of women. Without complementary legislation and government directives to its agencies and others, this legislation, regardless of how well it is crafted, will be of little use to women in, or leaving, abusive relationships. While it may be beyond the mandate of this committee to deal with these corollary issues, I believe it is imperative that I raise them with you because they are so truly integral to the effectiveness of this bill.

Women must have fuller access to legal representation. Many cannot afford to retain their own lawyers and yet do not have access to legal aid coverage. There absolutely has to be an expansion to the legal aid budget so that it is available to all women who require it and so that lawyers who wish to take legal aid certificates are not working for almost nothing. Women seeking an intervention order or defending an emergency order against an appeal will be at a distinct disadvantage where the respondent is able to retain counsel. They will not have the equal treatment under the law that is promised in the Canadian Charter of Rights and Freedoms.

Passage and implementation of this bill must be accompanied by mandatory police, lawyer and judicial education. Without those who will be primarily responsible for enforcing this legislation being properly informed about it, it will be of no use.

The education must include attention to the proper enforcement of restraining orders. I never fail to be amazed at how many police officers are not aware of the enforcement measures available to them now with respect to family court restraining orders. If a new system of restraining orders is introduced, as this bill suggests, police officers have got to be trained. I'm not pointing a finger at the police. I've looked at restraining orders they've been presented with and I too would be confused about how to enforce them. So we need some real skills training here for the lawyers who will craft the draft orders, for the judges who will issue them and for the police who ultimately will be called upon to enforce them.

It's not a pleasant position to be in for an officer who is often called to the scene where there are children present. The children may want to be seeing the father or not, as the case may be, but it's very awkward for the police to enforce these orders when they're not properly

written, or when they haven't been properly educated and informed about what the strength of the orders is and what options are open to them.

This legislation also must be supported by other changes that will increase the community-based services available to women. I'm sure you've also heard in the past four days of hearings that 75% of women in abusive relationships never interact with the legal or police systems at all. We've got to do something so that more women are prepared to make those calls that ultimately can save their lives and the lives of their children. In order to do that, I think we need to increase the funding to community-based services for women. One of the reasons women don't invoke the law now is because they don't feel they have any options other than to remain with their abusers.

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This legislation offers important protection to women. However, for it to be effective, women must have access to community-based counselling and other support services so they can begin to feel empowered enough to use it. Women's centres and shelters need more financial support, women require diversity in the services that are available to them and, maybe most important, women need to feel that they and their children can survive financially, indeed can flourish financially, even if they take the step to separate themselves from their abusers. So many women remain with an abusive partner because they don't want to impose a reduced standard of living on their children. I'm a mother; I can understand that. On the other hand, no woman should have to jeopardize her life or her safety in order to offer a decent standard of living to her children.

Just last week, at the METRAC and Toronto Police Service criminal harassment conference, I had the opportunity to hear from a number of police officers and lawyers working in the crown office. Without exception, they commented that the law should be a last resort, not the first or only resort, and that as a tool for dealing with this serious and complex social problem it is probably the poorest. They felt that while good laws that are well enforced are important—as do we, and that's why we're supporting this bill—those laws should be part of a many-faceted approach to solving the problem of wife abuse. METRAC agrees absolutely.

Forty women a year die in Ontario at the hands of their partners or former partners. This legislation is an important beginning to bringing an end to those murders. But without public education, for children as well as adults, without access for women to financial independence and without adequately funded community-based services for women, women will continue to die.

I thank you for this opportunity to make you aware of my organization's thoughts about this bill. I invite you to work in collaboration with us and with other women's anti-violence organizations to fine-tune this legislative effort, as well as to develop a cross-sectoral approach to the eradication of violence against women and children.

I'm happy to take any questions.

The Chair: We have about four minutes for questions and we'll start with Ms Bountrogianni.

Mrs Marie Bountrogianni (Hamilton Mountain): Thank you for your presentation. You stated that if these other services aren't in place, public education and other services, women will continue to be killed. Could you be more clear for the record, for the Hansard, on what you mean by that, what the implications are?

Ms Cross: While I think this bill is well written and important, it's of no use if women don't use it, and that's my concern. Women who already are not accessing the police or the law, if you want to put it that way, are not necessarily going to jump up and do that just because this piece of legislation is passed. Are they going to know about it? Is somebody going to make them aware of it in a way that they think it will actually help them? So many have been frustrated in attempts they have made in the past to reach out for help. I think that's where the public education comes into it.

In terms of offering corollary support services, a woman may read about this law and think, "That's great, but once the initial period of that intervention order is over, what's going to happen to me then? I can't survive on the level of social assistance that's available to me." Or she may be steps behind that and think, "I'm not capable of surviving without this man to take care of me, abusive though he may be." That's where the support to community-based services for women is so important.

Mr Peter Kormos (Niagara Centre): I appreciate your comments. I come from down in the Niagara region, where rents aren't as high as they are in Toronto but still far beyond what social assistance permits. The rents in Toronto are just out of this world. Natural gas is going up 45% this winter. Electricity is going up in most communities 20% to 25%. I'm sure everybody's constituency offices talk to women who say, "Is this the maximum?" and we have to explain, because of the 21.6% cut, "That's it." So I appreciate your point that this government's position on social services is forcing women either to remain in violent and deadly situations or, almost more dramatically, forcing them to return to them. A woman who's come up with all the things you have to do to finally say, "I'm out of here," and then to be forced to go back—I can just imagine going back into an abusive relationship. The power kick that must give the abuser must just be incredible. Is that a fair observation?

Ms Cross: Sure it is. There are a lot of reasons why women will return to an abuser. Money isn't the only one, in all fairness, but it's a significant one. They often will return because they're frightened to remain away because of threats that he's issuing about what will happen if she doesn't return, because the children so desperately want to return. But economics is right up there.

I come from eastern Ontario, where rents are much lower than in Toronto, but we see the same thing there. They make the initial attempt to leave—which is a huge act of courage, as any of you who know someone in that situation will know. It takes a huge act of courage to leave. To come back because you can't pay the rent or

you can't afford to put your kid in the hockey that he or she is used to being in is just a tragedy.

So we've got to begin by restoring social assistance levels to what they were five years ago. That's a beginning. Then they need to go higher. We need to restore funding to second-stage housing and we need to restore a commitment, at all levels of government, to low-cost and subsidized housing.

Mr David Tilson (Dufferin-Peel-Wellington-Grey): Thank you very much, Ms Cross. I assume you've had an opportunity to review the bill.

Ms Cross: I have. I like the bill.

Mr Tilson: You've commented extensively, and you've said that as well.

Ms Cross: Yes.

Mr Tilson: My question is whether you've got any suggestions for improvements to the bill, amendments.

Ms Cross: I think the bill itself reads very well. When I first sat down to look at it a week ago, I had thought I would go through it and say, "You need to do this; you need to do that." I think the bill is well crafted as it is written.

What I and my organization think is critical is to put into place to ensure somehow all of the—I don't want to call them "peripheral" because it sounds like they're not so important—satellite issues that I identified briefly in my submission that are so important. Women have got to have access to legal representation through this process. I don't think that can form part of this bill necessarily.

Mr Tilson: No.

Ms Cross: If you think it could, I would certainly support putting it in there.

Mr Tilson: And the other—

The Chair: I'm sorry; that's all the questions. Thank you very much, Ms Cross.

Ms Cross: Thank you.

FREEDOM FOR KIDS

The Chair: The next speaker is Mr David Osterman, Freedom for Kids.

Mr David Osterman: Good afternoon. I appear to be a last-minute replacement for Chief Fantino, so I'm not as prepared as I should be.

I also appear to be in the unenviable position of being against the bill, which is purported to be anti-violence, which would make me in the position of seeming to be in a pro-violent mode. I'm against this bill precisely because the fallout from this bill will be more likely to be an increase in violence against women, and violence against men as well.

The violence that is never really addressed by these kinds of laws is third-party violence or court-based violence. Third-party violence is where somebody counsels somebody else to injure another party. Court-based violence is using the court system, the process itself, as a way to inflict damage. We forget that courts operate by the judicial application of violence. An order is a coercive order. If it's not obeyed, the police will arrest you and

they will forcibly confine you. They can bind you, they can use force, they can hit you, etc. All of these things are permissible by the police because they are doing their job. It's still violence.

The intervention orders that are proposed in this bill, and which also exist already in family law to some extent, also include a level of violence. Forcible eviction from their home is something that's very similar to unlawful confinement, because rather than preventing you from leaving a particular location, you're prevented from going to your home, which is the location that most people would prefer to be able to go to.

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You also lose control over who you can meet, who you can associate with, because when you have a relationship with somebody you often share a large number of friends. Since you can't necessarily communicate with these friends because they can then communicate to their friends, who are the people you are not allowed to communicate with, you can lose a lot of your friends. You're prevented from seeing your friends.

You also lose your finances and your ability to defend yourself or even to survive. That's pushing it maybe a little bit, but you do need money to live; you need money to rent a place. If you don't have any friends and you can't couch-surf, then you have to have a hotel somewhere, have to have credit. All these things can be lost if you have no control over your own bank account.

All these are violence, to some extent—not necessarily direct, physical violence but they're all included in the general category of abuse, at any rate.

I'd like to give you a little scenario here. At 2 in the morning, a sleepy-eyed judge wakes up and is asked to make an intervention order. If he makes an intervention order, we know beyond a doubt—there's no doubt at all—that domestic violence has occurred at that point. We know that, but we don't know who the victim is and who the perpetrator is. When he makes that order, the victim could be the woman in the house and the perpetrator could be the man beating on her who's being prevented from going into that house. Alternatively, the victim could be the man who's innocent of this but now can't see his children and can't live in his home, can't see his friends, has no place to go. Women's groups have formed women's shelters, which will accept a place for a woman to go to but a man has no place to go, other than his friends. They couch-surf.

Since it's based on a balance of probabilities and only one side is presenting its story—like the words from the AG office from Monday the 23 that were presented to this committee—it should be easy to prove. Of course it's unbalanced; only one side is presenting a story. So if it's not easy to prove, why would they even bother with a phone call? So what this tends to lead to is that it makes a very simple first strike in a divorce custody dispute, because by removing one parent from the family, the way family law seems to work, you've basically established custody. The rest of the process is just a matter of letting

things run out and getting the official stamp of approval on what is currently the status quo.

You are probably aware that a whole bunch of Toronto's playgrounds were torn down not too long ago. They were torn down because they might be unsafe. There was a potential that there could be a problem. Not that there was necessarily a problem; there was a potential that there was a problem, so they were all demolished.

Well, here you have this judge here, sleepy-eyed in the morning, and there might be a problem so of course he's going to do the intervention order. Why wouldn't he? If he's correct, then he's done the correct course of action. If he's incorrect, the only thing that's going to matter is that some poor man is going to be out on the street for a while. He's going to assume that the man can take it. He's going to assume that he won't react to it legally. He's going to assume that there's not going to be a single men's group that's going to fight for his rights and that there's plenty of women's groups that will fight for the woman's rights, if he was wrong. So the natural course of action would be to say, "Let's make the order."

The judge will not receive unfavourable criticism if only a man is harmed. Do we really believe men are so worthless? We know they die six or seven years younger than women do, and yet we don't put any additional emphasis and research on men's health issues. We know there are 3,000 male suicides in Canada on an annual basis. Probably about 1,000 of those are in Ontario. Since divorce and relationship breakdown is the highest grouping of suicides, we could probably estimate—and there are no good studies on this; this is merely an estimate—that about 300 of them kill themselves because of relationship breakdown, and we're comparing that to 18 to 40 female homicides.

Women are not affected by divorce as far as suicide goes. Their suicide rate doesn't change. Suicide is the highest cause of death for men under 45. The ratio is about 10 to 1 here. We're willing to allow 10 men to suicide, roughly, for every woman who gets murdered. The Luft and Hadley familicides can only be seen as suicides first. This is what was happening in this summer of violence. Those men wanted to kill themselves first, and only then did they think about, "Who else should I take out with me?" Only when they were deranged enough to start thinking about other weird things did they go to that level and then kill those women and children. They were suicides first, and that's because we don't care about men.

In the 1980s, the US Marines had a base in Beirut where one suicide bomber killed 300 Marines. This was their home at the time, their base. It was their most vital interest to protect, and yet 300 of them were killed by one suicide bomber. You can't really stop a suicider who's got a mission to kill what their demented mind says is their tormentor. It's really hard. Similarly, recently the USS Cole was attacked by a suicide bomber. It's really hard to stop. Even the Marines, even the Navy, can't stop them.

Rather than stopping them, it's better to prevent them. That way, you save the life of the guy as well as the women and children, but because we are only concerned, it seems, about saving women, we ignore this simple—actually it's more difficult maybe, but this basic—concept that by saving the men, you save the women.

If there was a funded and advertised helpline for men, then these people who are being overwhelmed by relationship breakdown because of the way they're treated by the court system. They would have someone to turn to and not feel so isolated. Incidentally, if you've ever phoned any of the helplines, you'll quickly find that they have no concept of what it's like to be a man in a divorce situation when your wife has kidnapped your children, for all intents and purposes.

What we need to do is reduce violence overall, de-escalate the conflict. Bill 117 escalates the conflict. It becomes the first strike. The intervention order prohibits contact with the children and common friends. It wipes out his informal social safety net. He becomes friendless and isolated. These are all aspects of abuse, according to the Duluth model.

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He looks to the legal system for justice and finds he can't afford it. For most men, justice isn't even affordable, and there's no legal aid they can use because their income is higher than what legal aid will provide. But if he can get a lawyer competent in family law, his chances of getting custody of the kids are really low. With Bill 117, he already knows he's been steamrolled with this first strike. These kinds of things are what overwhelm and frustrate people, and that's what leads to violence and suicide.

It's also common for men who have had an intervention order against them to find that women are quite willing to break the intervention order, and they do so with impunity. They call them on the phone to arrange things, things they forgot at their homes, things they would need, like numbers or whatever, bank account numbers—who knows? If the woman's staying at a women's shelter, she might return in order to get stuff. I've seen this with a number of men.

The only reason why one woman stayed overnight at her original residence rather than returning to the women's shelter was that she had been out past the curfew hour and then met another woman socially, not through any of these groups. This was sort of surprising to me because she had been to a women's shelter. I knew she had been divorced quite some years ago and had a good relationship with her former husband, but it turned out that she hadn't had a job for a while and wanted to rent out her home and didn't have a place to live, so she went to a women's shelter. She hated the place and consequently left. I've also heard that all women who go to women's shelters are abused, but she certainly wasn't.

The Chair: Mr Osterman, could you wrap it up, please.

Mr Osterman: I'll speed things up here.

Another thing I'd like to mention is fear. Fear is an emotion that resides within our person. Another person

cannot possibly tell what the real state of mind is. People have a fear of snakes. They have a fear of dirty homeless men. But is this fear justified, and how do you determine that?

In a divorce situation, both people are afraid. They're afraid of change. They're afraid of the unknown. We'd hope women would be mature enough to realize that this is just a part of the process of living and not take it out on their ex-partners as a fear of their ex-partner. The same thing happens with sick, depressed and enraged people. They don't need Bill 117. What they need is therapy, but at 2 am there's no way for a judge to know that.

Non-custodial parents have a common fear that they will not see their kids. At any time this can happen. One therapist, in a case where a woman appeared to be doggedly preventing access, just said, "Forget your kids." This fear that non-custodial parents have is also a fear of abuse.

We live in a representational democracy. We have a women's directorate, women's issues and women's gender analysis, but we have no equivalent for men. No men's group I know of had any input into this bill prior to these hearings. Some government-funded studies will cut out pieces of statistics that are about men. For example, Lupri is an academic in western Canada who did a study on domestic violence, and his stats on female-to-male violence were not permitted to be published.

As far as recommendations for this bill, it's not really a good bill, but if you're going through with it, the balance of probability is far too weak. You need something stronger because it's an ex parte motion; the other side is not getting any kind of hearing. These orders need to have time limits. They need to include in the definition of domestic violence counselling others to commit violence, falsely alleging violence to a court. Assault orders should be mandatorily prosecuted. Most important, what we've really forgotten is the Common Sense Revolution had a little article that said that they would promote alternative dispute resolution in family law, and that has been ignored all this time. It's revising family law that will reduce violence.

The Chair: Thank you, Mr Osterman.

Mr Osterman: Do you have any questions?

The Chair: No, we don't have any time for questions, unfortunately.

Is the Canadian Bar Association here yet? We can wait. There is someone who is willing to go now and we can hear from that delegation, if you prefer to wait.

SECOND SPOUSES OF CANADA

The Chair: Second Spouses of Canada, Dori Gospodaric. You have up to 20 minutes.

Ms Dori Gospodaric: That's fine, thank you.

As the lady said, my name is Dori Gospodaric and I am here to represent the tens of thousands of women who are second spouses in Canada. I don't have the actual number, but there are many of us. We are women you don't usually hear from and we are women who strongly

disagree with you today. We know there are two sides of the story.

Second Spouses of Canada is not a federally funded group. It's made up of women who have found themselves in a situation which has horrified them. These women, like me, have been shocked and disgusted at what they have come to see is an epidemic, an epidemic of abuse.

We are hard-working women, and we support our husbands. We support them emotionally and financially. We witness their pain and devastation as we watch them being denied their very own children. We pay a very high price. We hear constantly about power imbalance and control and abuse. I am here to tell you these are alive and well, and I'll tell you why.

It's an interesting conundrum, actually. Remember, we as second spouses are not only women, but often mothers too. Look at what we have: mothers fighting mothers; women against women. As second spouses, we enter into a process called "guilty by association": false allegations that are now made by one woman against another woman.

Did you know that second spouses, women, are also regularly falsely accused of being a bad parent; accused of being a drug addict or alcoholic; accused of not treating children properly; accused of allegedly hiding money that the other mother wants? Second spouses are regularly subjected to threats and harassment. Remember, we, as second spouses, are also the same mothers that courts have sanctified and sanctioned and considered sacrosanct.

Do you know how many of us are actually hauled into court by other women? It happens regularly. They want disclosure of financial statements. They want proof of character. They want whatever they want when they want it, and it never ends.

What's occurring with us women is common, but never discussed, and yet we have these national, federally funded female organizations who claim to represent women. Do they? I have never heard them address the issue of women being abused by other women. I am deeply disappointed with these funded women's groups. We, women and mothers, have been silenced. Do these funded women's groups come here to talk about this? Did they tell you about the abuses perpetrated by women? Are some women more equal than others?

The funded women's groups and organizations claim to represent women. "Which women?" I ask. I guess only certain women. I am a woman and a mother and I don't care what the gender is of my abuser; I want it to stop. I want to know, what are you going to do about this? You are funding those women to abuse me. Why are we not hearing about this? The system does not protect women; the system protects only certain women. Why is it that those women's groups, funded all the way, silence women's voices? This information has been suspiciously absent by these women's groups.

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Bill 117 is clear to me, another bill that snuck up on us, quietly and insidiously. It calls for even tougher

measures against perpetrators of domestic violence. Despite the language, you and I both know that it's really about men: men as the perpetrators and the women as the victims. That's really all we're interested in.

I know you're in a quest to conquer domestic violence, but there is one major flaw: you're not separating the hype from the hope. That's the big difference: hype from hope.

Do you all know the definition of "insanity"? It's doing things the same way and expecting different results. I have pointed out to you that there is only one view that you seem to subscribe to, and that is that men are the abusers and that women need to be protected from them. The brainwashing continues. Figures commonly quoted in the media always refer to males as being the problem, that's the comfort zone, yet when Stats Canada recently reported that domestic violence is caused almost equally by men and women, what happened? Nothing, absolutely nothing. The media doesn't mention it at all. When women are presented with this fact they brush it aside. It makes them uncomfortable and very angry. Why is that? Well, there is a great deal of the special interests in the booming domestic violence industry. Publicity about domestic violence against women has reached a point where I, along with many women, feel it is a disservice to women. The hysteric reaction to men is de-meaning to me as a woman, it really is.

Feminists always wanted equality among genders. That was the ultimate concept they wished to achieve, and I agree. But now, when we've come a long way, baby, women often don't like that equality and it's now bad when it doesn't suit us. In common language, we want it both ways. Women want to have their cake and eat it too.

Sure, females by the luck of their biology are the bearers of children. But here's the big news: being a mother does not make us sacrosanct; it does not make us pure and does not make us morally superior. There is no superiority of the uterus, I promise you. I can give birth, sure, but what do I get in return? The winning prize: immense power, and the belief that women never lie.

You have already provided measures of protection for me. It's called our criminal justice system. I also have all sorts of women's groups and shelters and societal supports to run to. And you have provided for me that ultimate weapon: a phone call. Any man in my life is simply one phone call away from total destruction.

This Bill 117, as I read it, is really only about money. It would more aptly be called a seizure of assets bill. It's really not about abuse or violence at all. We already have a domestic and divorce system that amply sees to the transfer-of-wealth policy—you know, the winner takes all—where the woman is assured custody of the children and the financial subsidy from her husband for a very long time, if not forever. You have already provided that whether I deserve it or not.

Isn't it amazing that these women who want to be independent turn into a bowl of Jell-O when they're unhappy with their men? They appeal to society, welfare,

the politicians and the legislators for money. They can't manage a thing. Their grief is always someone else's fault, and someone else should fix it. They become helpless and they come crying to you. Yet it is these very women, downtrodden and all, who are entrusted to raise our children—pretty scary to me. Now, you'll see to it that I can get all of this even more easily. All I have to do is a moment of fast-fingering on the telephone and magic happens: no questions asked. I am a victim because I say so.

You see, in your comfortable concept of men being the abusers, you would know exactly what to do: lock them up and throw away the key. But, like I said earlier, it is women who are becoming the abusers in more ways than one.

In my current circumstance of being a wife, a second spouse, I am married to a man who is also an ex-husband and a father. Let me tell you, 11 years later, 11 long years later, there is no end of insanity and allegations and threats perpetrated by his ex-wife. If you believe that by getting rid of the abusive husband, get him out of the house, give her the children and the house and a subsidy for life that this insanity will end, you are dead wrong. We women continue to be victimized through our husbands. Being an ex-husband should have ended it all, right, problem solved? Wrong. Like I said, over 11 years later the abuse still continues. Getting rid of the man has changed nothing.

My husband has been told by his ex-wife, in front of the children, that nothing will make her happy until she sees him dead. Eleven years later, she has promised to report me to the authorities any time she feels like it because I have no right to speak to her children. Eleven years later she has attempted to have my husband arrested. She has attempted to have me arrested. She has completely alienated all three children from their father's life permanently and completely—by the way, she's a teacher—\$70,000 worth of court orders for access later, but no one cares and it is never enforced.

The Chair: Ms Gospodarcic, I wonder if I could just interrupt for a moment. I do need to read a caution to you about parliamentary privilege.

Ms Gospodarcic: All right.

The Chair: While members enjoy parliamentary privileges and certain protections pursuant to the Legislative Assembly Act, it is unclear whether or not these privileges and protections extend to witnesses who appear before committees. For example, it may very well be that the testimony you have given or are about to give could be used against you in a legal proceeding. I'm just cautioning you to take this into consideration as you continue making your comments.

Ms Gospodarcic: I'm not sure how—

Mr Kormos: Don't worry about it. Truth is always a defence to slander.

Ms Gospodarcic: I have the truth on my side so I'm not afraid.

Mr Garry J. Guzzo (Ottawa West-Nepean): She has already filed the evidence in writing so it's too late now.

The Chair: I'm just cautioning you. This is something that has been raised in the past with respect to parliamentary privilege.

Ms Gospodaric: OK. These are facts.

The Chair: You may continue.

Ms Gospodaric: I'd be happy to attend a proper court and talk to this if you needed to.

And yet we will enact a bill to give women like this ex-wife further powers, 11 years later, to give her more ammunition to make our lives a living hell? I suppose I am provided an equal opportunity to torture my ex-husband's wife in order to equalize my own torture, but is this what you're aiming for? It's really insane.

The potential for abuse of this bill is huge. I can tell you that with this bill, not one violent act will be stopped. What I do suggest is that you will promote further hatred and antagonism and very probably this will flip you on the backside with a completely opposite effect.

When you back someone—that is, one side—into an impossible corner, strip him dry, take away all his rights, what do you think will happen? When men are so degraded, devalued, belittled and blamed, what do you really think will happen? When their children are permanently torn away from them, what would you do? I know it would destroy me, and I dread to think what I might do.

In my guilt by association, I, along with thousands of other women, know only too well what it's like to be slandered and reviled. We do want protection, yes, but we want to be able to protect ourselves against other women.

Not only am I worried about myself, but I worry about my son. What do we all tell our sons? That their father is bad and that men can't be trusted? That mothers and women have all the rights and men none? They are learning this at mother's knee. Girls, on the other hand, get to learn how to use, abuse and manipulate the system. Do you see how this perpetuates itself? It's a non-stop treadmill.

Don't you see the great economic force that is pushing all this mass hysteria? There are enormous special interests here: the women who run the shelters, women who are hired and paid to run women's groups, the lawyers, the social workers and the psychologists. There is great fervour of the lobby groups; provocative ads showing women and children being hit and beaten as factors behind demands for more money. Trust me, there will never be enough money to make these women happy. Their purpose will never, ever be achieved to their satisfaction, because when you begin to hand out money for the asking, there will never be enough.

Be careful what you wish for, because you might just get it. For all the lofty ideals purported in your domestic violence measures, you are further creating the very problem you are claiming to correct. We women are fed up with the abuse from other women. Woman against woman, mother against mother, children against children. It never ends.

Take pause, please. Stand still for just a moment. Don't get caught in the political expediency. Our families are paying a very heavy price. You are contributing to hate and fear-mongering and disabling women from self reliance and I, as a woman, am ashamed.

Where is the common sense? I think we've lost all perspective. I repeat, if you continue to do things the same way, don't expect different results. I ask you to just stop for a moment and think. Thank you.

The Chair: Thank you, Ms Gospodaric.

Ms Gospodaric: My time is up?

The Chair: Yes.

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CANADIAN BAR ASSOCIATION—ONTARIO

The Chair: The Canadian Bar Association, Cynthia Wasser and Judith Huddart, past chair of the family law section. You have up to 20 minutes in which to make your submission and have questions asked if there's time.

Ms Cynthia Wasser: Thank you and good afternoon, ladies and gentlemen. As indicated, my name is Cynthia Wasser. I am a criminal defence lawyer practising in Toronto for about 15 years now.

I also sit on the executive of the criminal justice section of the Canadian Bar Association—Ontario, and Judith sits on the family law section of the Canadian Bar Association. We're here to represent the views of our two sections.

I have reviewed Bill 117 and I have the following submissions to make to all of you, that I ask you give very careful consideration to, from the perspective of criminal defence lawyers and crown attorneys who make up the executive to the criminal justice section.

In the explanatory note attached to the bill, which I believe was also the statement of the Attorney General, it is indicated that the purpose of this bill is to provide for intervention in cases of domestic violence beyond that which is allowed under the current law.

Clearly, the intent of this bill is to address domestic violence, the cases that are prosecuted in the criminal courts, and the bill indicates that it will be enforced by peace officers under the Criminal Code. This concerns those of us who practise in criminal law for the following reasons.

First, if we look to the definitions section, under subsections 1(2) and (3), domestic violence is defined as having occurred whether or not a charge has been laid, dismissed, withdrawn or a conviction has been or could be obtained. In our view, this bill may very well be creating a new criminal offence. This raises concerns about the constitutionality of the bill, as the province, as we all know, cannot legislate in the area of criminal law.

What the bill does is create a framework whereby the applicant applies to a court for an order, the breach of which is a criminal offence. It is not, however, a prerequisite that the criminal offence has been or is about to be committed. In fact, an accused person may have

been charged with an assault and acquitted, vindicated even, and then the applicant may still apply for an order based upon the very facts alleged at the criminal trial. If the order is breached, that person is subjected to another criminal trial.

Next, under subsection 3(1), the court may make the order if it is satisfied on a balance of probabilities that domestic violence has occurred. This utilizes, of course, the civil standard of proof to make a finding of a criminal matter. This raises issues of constitutionality as well.

It also concerns us that it could create an abuse of the criminal court system. Further evidence of this possibility of abuse is found in the definition of domestic assault under subsection 1(2). It includes an assortment of offences punishable under the Criminal Code already. Assault causing bodily harm, threatening, physical confinement, sexual assault, sexual exploitation and criminal harassment are all currently found in the Criminal Code. Therefore, the code covers all aspects of the definition of domestic violence already. If the Criminal Code is not available because the police do not have reasonable grounds to lay a charge or the prosecutor does not feel there is a reasonable prospect of conviction, then the use of provincial legislation may be *ultra vires* and abusive.

There are other problems with the definition section as well. Insofar as the bill creates a statutory obligation to refrain from acting in a criminal manner, it imposes as well an obligation to act positively in a certain manner as domestic violence is very broadly defined to include "omissions" that cause bodily harm or damage to property. In the extreme examples, which would have to be litigated if an applicant applied to court, you could find the abuse in court in the following situations. If the respondent refuses to fix something in the house and damage occurs, the section kicks in because there is property damage. An order may not be obtained, but parties would be forced to litigate. Does it also include the threat of refusing to babysit by one partner, which could therefore potentially cause bodily harm to the child if the other is leaving the house?

It includes "omissions" that cause the applicant to fear for his or her safety. What are those? It includes a threat that causes the applicant to fear for his or her safety. This creates a legislative framework for the "yell at your spouse and lose your house" principle.

It also includes "sexual molestation." This is not defined in the bill nor in the Criminal Code. What is it?

It includes "recording" any person in such a way as to cause them to fear for their safety. "Recording" is not defined in the bill. The Criminal Code, section 184, defines unlawful interceptions, but they do not apply to someone who is part of the conversation and thereby giving consent.

The definition of "applicant" under section 2 causes concern. It is very broad. It includes former spouses who may have already settled family asset claims. It includes people who cohabited for any period of time, even if they are not cohabiting at the time of the application. Therefore if the respondent lived with someone for only one

week and it did not work out, that person is entitled to apply, thereby causing abuse in the court system.

It includes those in dating relationships or who were in dating relationships, but this is not defined. So theoretically, the respondent may have dated somebody a few times several months in the past and would find themselves subjected to the litigation. On September 27 the Attorney General indicated in announcing the bill that we would also be the first province in Canada to expand the definition of domestic violence to include people in dating relationships. However, it is important to note that the Criminal Code of Canada does not exclude dates from being victims of assault, sexual assault or other offences.

The bill also includes relatives of the respondent as applicants if they've lived with the respondent, such as children—with an age restriction of 16 only. Therefore a teenager who wants something may use the act in an abusive way.

The contents of the order, under subsection 3(2), also concern us. These people are able to obtain an order granting them temporary possession and exclusive use of specified property. They can take over the family cottage, credit cards, and bank accounts, even if they were only in a dating relationship, or if they were children.

The bill grants the applicant exclusive possession of the residence shared by the applicant and the respondent regardless of ownership and regardless of the length of the cohabitation period. These are excessive.

Under subsection 4(7), the bill says that it prevails over other civil orders, including the Divorce Act, which is federal legislation. This may be unconstitutional.

Under the Criminal Code, it is believed that subsection 127(1) will be used to prosecute the breach of order, although the bill does not specify this. Section 127 of the Criminal Code states that disobeying a lawful order made by a court is an indictable offence that can be punished by a term of imprisonment not exceeding two years. It excludes orders for payment of money to be used under this section, so that will not be enforceable under 127.

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The Attorney General's announcement on September 27 states that these breaches will be prosecuted in the domestic violence courts specifically created by Ontario in the Ontario Court of Justice. However, section 127 is an indictable offence, and the accused is entitled to elect to be tried by a court composed of a judge and jury in the Superior Court of Justice. Accordingly, the trial will not take place in the domestic violence court and it will take longer to prosecute the breach, which I believe is not the intent. Because the term of imprisonment is less than a two-year period if the breach is not a violent one, a conditional sentence might be an option pronounced upon the accused, if convicted.

At this particular time, the Attorney General has directed the crown attorneys to oppose conditional sentences in violent cases. If they do so, the likelihood of resolution or a guilty plea is very poor.

I'm going to be brief because I understand that I might be running out of time and Judith does wish to address you.

I want to make it clear that under the current legislation the breach is prosecuted as a summary conviction offence in the Ontario Court of Justice, and conditional sentences are not an option under the current law. By using section 127 of the Criminal Code, that will be taken away. It will take longer to prosecute and the jail sentences that people may be looking for will not be available.

It is the view of the criminal justice section that the current legislation can be amended to address the concerns of the Attorney General in a more fair and more efficient way for all people involved, including the victims.

If I may now finish addressing this committee and allow Judith to address you and then I'll take questions.

Ms Judith Huddart: As we've heard from the criminal law section, they have a number of concerns. I think that's pretty clear. Unfortunately, we too in the family law section have a number of concerns. As I've indicated in the letter that I believe has been circulated to you, we can't support the bill in its current form, although we certainly do support the initiatives to deal with domestic violence, and make no mistake about that.

We have some of the concerns in the letter. Certainly the criminal issues have an impact on our clients. If there are challenges to this legislation, our clients will be dragged through the courts, and we look at that as just another weapon for someone who has already been victimized in the process.

We also question how many women will apply to the courts for such orders, because they're caught between domestic violence courts in some areas, quasi-criminal courts in other areas and, of course, we deal with them in the family law area, and that may be a whole other court. The costs and the procedural difficulties that may happen with this legislation are a big concern to us. Can our clients afford it? Can they afford a criminal lawyer plus a family law lawyer? These are real issues that I don't yet see being addressed. That's another reason why I think we should hold back and have further discussion.

We do wonder how this bill would coexist with the current criminal law, as Cynthia has indicated. We aren't sure when we would want to recommend an intervention order as opposed to a criminal action. We can envision that our client is not going to call a family law or criminal law lawyer in the middle of the night. They're going to call the cops if they have a problem. That will probably put them in the criminal process directly. We're assuming assault charges will be laid, and that takes them outside this process. If they want some of the other benefits from this, they'll have to jump back in at another point. That intersection is problematic, to say the least.

We also are concerned that we're going to possibly—well, we are, according to the current draft, going to lose our civil restraining order remedies, which have worked. They don't always work and there are problems with

these things, but we do have a system. We can get our orders registered on CPIC with the police if it's necessary to enforce them. Not all lawyers are as knowledgeable about the system, but that's an educational question rather than a legislative question. We don't want to be seen as not supporting any initiative that will help address issues of domestic violence but we want to see the other proposals go along with them.

The other mention in the press release was that there would be other systems, including counselling and continuing education, for police, court staff, crown's, the bar. We would like to see justices of the peace get some education in that process too because we know that there are problems at that level.

This whole process is going to take some time and in this process we would like to have some input. We're happy to sit down and work with the Attorney General to make sure that all the concerns, or at least as many as possible, can be addressed and have a piece of legislation come into effect for our clients, be they the victims in some cases or the abusers in some cases, because we represent both as family law lawyers—husbands and wives—that makes sure the system works for them and that we put our money into an area where it can do some good.

The Chair: That's your submission?

Ms Huddart: That's it.

The Chair: Fine, then. We have about three minutes for questions. Mr Kormos, you have just one minute, please.

Mr Kormos: I know you're generous with me, Chair, consistently.

Thank you very much. Your comments are very important. You're referring to the repeal of section 35 of the Children's Law Reform Act and section 46 of the Family Law Act when you make reference to deleting the orders that could be obtained under those two statutes. You're concerned about the confusion—for me, the apparent confusion—in terms of subsection 4(7), and that is, the emergency intervention order shall prevail over any other orders, yet subsequently in the act, an emergency intervention order has the capacity to be deemed a permanent order. That's where I get confused and perhaps the PA will address this when we do clause-by-clause because I get confused about whether its status overruling or overriding the other orders is maintained when it's merely deemed, for instance, by virtue of no contest.

I just read a recent decision, *Kassay* by Judge Joe Quinn, down in my neck of the woods, St Catharines. It was a family matter, an application for contempt order in terms of non-access. Judge Quinn in the summary of this new decision circumvented the long-standing rule that contempt was only to be found as a last resort and said, "No way. I'm finding this person in contempt. It's not enough to merely purge it, and as a matter of fact, if there isn't compliance there will be a 30-day jail sentence." So is that a positive thing, that more aggressive use of

contempt in terms of enforcing orders than what you're seeing here in Bill 117, or can the two go hand in hand?

Ms Huddart: I think that to date, we've gone hand in hand from the family law context and in the criminal law context in terms of some of these. Now, again, it depends on how judges apply the legislation and the powers that they already have.

You're right. There's been a reluctance in most levels of court to impose a contempt which brings with it a jail sentence, although we're seeing it now under the Family Responsibility Office when there's constant refusal to pay support. Now judges seem more willing to do it so maybe that's moving over into access and custody issues.

I'm not aware of that case that you're discussing. I don't know. Maybe Cynthia—

The Chair: Mr Tilson?

Mr Kormos: No, it was just summarized.

Mr Tilson: It appears the lawyers think this will be challenged in the constitutional courts, and I expect you are probably right, although I believe that it will withstand those challenges, but that's what these applications are all about. And too, the criminal lawyer, Ms Wasser, one of your comments, for example, with respect to sexual molestation, certainly it's not a novel term, as you know. It's used in the Child and Family Services Act in describing a child who may be in need of protection. But I guess that's a debate that may end up in the courts.

My question really has to do with the comment that this legislation will drag women through the courts. I believe you, Ms Huddart, made that comment. We've had dads' groups and men's groups that have come in and said quite the contrary, that, for example, section 4, which is the emergency intervention order, will do just the opposite; that section will be abused by women.

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Ms Huddart: It will be too swift. I was actually meaning that in the context of challenges to the legislation. What I perceive is that, yes, someone may get an emergency intervention order but then I believe it's 30 days, at which point the alleged abuser has the right to challenge that. If that person, assuming a he, goes to a criminal law lawyer, such as Ms Wasser, they're going to say, "Hey, you know what? There are problems with this bill and I think maybe yours is the case where we're going to deal with it." That person may be on legal aid, I don't know, and maybe his spouse isn't on legal aid because she's not necessarily in the same context as him, being charged—

The Chair: Thank you, Mr Tilson.

Mr Tilson: Thank you for your thoughts.

The Chair: There is time to allow one question, Mr Bryant.

Mr Michael Bryant (St Paul's): You've raised so much and I just wish that we could have a lot more time. I hope you will follow up on your offer to work with the Ministry of the Attorney General in order to address the concerns you have.

There are always constitutional concerns with some bills but I think what you've raised is a serious concern

because the purpose of the bill might be violated if in fact what we do is make the victims fund any flaws.

In addition to addressing your concerns and trying to charter-proof the bill and also make it consistent with federalist concerns, before we drag the victim through the courts, what do you think of the idea of having the Attorney General bring an application or a reference so that we can rule upon these matters in advance of the specific litigation?

Ms Wasser: There's no reason why the Attorney General can't do that as an option. The Attorney General acknowledges that he must seek the approval of Parliament to amend the Criminal Code in order to enforce this. Parliament, as we know, is dissolved right now and not likely to be reinstated before the new year. So there's plenty of time for more communication with the stakeholders, to take our time to ensure that you are putting forward a solid bill without sloppy drafting and by that, you should be having the consultation process in a more democratic manner with those stakeholders. All of us would love to have more time with the Attorney General and his people to help draft it in a proper way.

You should also know the Criminal Code right now is taking care of the victims of violence with the sections I've mentioned, as well as section 810 which allows for a peace bond to be issued. It covers everything.

The Chair: Thank you very much, Ms Wasser and Ms Huddart.

Mr Kormos: Remember, the Attorney General doesn't have a very good track record in court with this government, does he?

Ms Wasser: If the committee wishes, my submissions can be put in writing and sent to you by November 9.

The Chair: That would be really appreciated. Actually, the deadline is November 7. We did publish it as November 9, but it is November 7.

FAMILY LAWYERS' ASSOCIATION

The Chair: The next delegation is Mary Reilly, who is the chair of the Family Lawyers' Association. Good afternoon, Ms Reilly.

Ms Mary Reilly: Good afternoon. Also with me is Melanie Sager. Ms Sager will be addressing the issue as it relates to shelter clients. She's done a lot of work with shelter clients in the past.

Just as an introduction, the Family Lawyers' Association was started back in 1994 as a result of the legal aid crisis, and the purpose of our association is to lobby, to look at policy on issues that relate to family lawyers practising and how they affect our clients.

My remarks are going to basically concern the legislation as it relates procedurally, my reading on the legislation, and as I said, Ms Sager will be addressing the issue as it relates to shelter clients.

Currently, restraining orders and family law proceedings are granted pursuant to the Family Law Act or the Children's Law Reform Act. The majority of these orders in the city of Toronto and other jurisdictions that

do not have a unified family court are granted in the Ontario Court of Justice. Bill 117 would eliminate the Ontario Court of Justice's ability to make restraining orders on either a temporary or final basis.

It is the family law lawyers' position that the enactment of this bill would increase costs to individuals utilizing the system, either personally or through the legal aid plan. The reason I'm addressing this is that this legislation is not clear as to whether it's going to end up in the criminal courts or the Superior Court of Justice, the court over at 393 University Avenue that deals with family law matters. My reading of this legislation, when I looked at it, was that anybody seeking what used to be called a restraining order would now have to go over to 393 University Avenue and into the Family Court and deal with their procedure as opposed to going to the Ontario Court of Justice and asking for a restraining order in that court. That was my reading of this legislation so that's how I'm addressing my remarks.

The current procedure in Toronto at the Superior Court of Justice is paper-intensive and in no way user-friendly. When you have an applicant who has this temporary order—which is another problem, how the paper gets to the court—having to go over to the Superior Court of Justice and start an application, there is no assistance over there. There's a little bit of duty counsel. But for those of us who have practised in that court, it's hard enough for the lawyers to deal with it. So I don't know how the unrepresented victim, who might have to do this on his or her own, at least to start with after that temporary order is actually given, will ever cope with the court procedures, especially for the unrepresented. Those with lawyers can cope better, but those who have no lawyer will find the system very cumbersome and non-user-friendly.

The other thing this bill could do is lead to a duplication of court process. Currently, those parties who have no property issues will go to the Ontario Court of Justice. One of their issues may be a restraining order. They deal with custody, access and support issues. If there's an issue of domestic violence, you're not going to have them in one court dealing with three issues and off in the Superior Court dealing with one issue. What I would do, as a practising lawyer, is take all my issues to the Superior Court. But it's conceivable that you could have a duplication of proceedings, where you've got custody and access and child support and spousal support in the lower court and the intervention restraining order in the higher court, or those cases that normally should be in the lower court will end up in the higher court. What will happen is that you're going to increase the cost to individuals who are paying—it's less costly down in the Ontario Court of Justice—or you're going to increase the cost to the legal aid plan because all those issues are going to be bumped up to the Superior Court.

I would suggest that this legislation really isn't providing the protection to the individuals who need protection, by complicating the procedures. When I read this legislation I'm trying to envision from a practical point of view how it's going to be administered. It's 2 in

the morning. Who's going to type the order for the JP or the designated justice? Who's going to serve these orders? The legislation says that if an applicant doesn't have a lawyer then the court's going to serve them. The court resources are so strapped right now, I just don't know how from a practical point of view this is going to work, and it's not an effective order until the respondent is served. Procedurally, how is the court file created in the middle of the night? All these questions came to me when I was reading this legislation. Again, if the courts are open, the applicant can go down. But I know what the procedure is like at the Superior Court; it's not user-friendly. There are not people there to help people fill out paperwork, and it's very difficult to get in front of a judge.

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The timelines in this legislation are impossible. I believe it's in 30 days that you have to go back to court and request a hearing, and then the clerk says that within 14 days that hearing has to happen. The courts don't move that quickly. The current procedure doesn't provide for that, at least in my experience. From a very practical point of view, I'm not sure how this legislation is really going to work and protect the people who need protection. I think it could actually make it worse than it is now. Again, in the Unified Family Court and under the new family law rules you've got the same problem because of the procedures in those rules. They don't move that quickly. That's not the way the rules work.

This bill will result in increased cost to the government, to the victim and to the legal aid system—that's the way I viewed it—and most likely will not provide the protection required, which I know is the aim of this bill. I don't view it as providing an expeditious access to justice when as a practising lawyer I look inside the system and how the system works.

Restraining orders can be made. The courts make them under the Family Law Act and the Children's Law Reform Act. Police forces need to be educated about enforcing those orders if there's a problem. The police have to determine who's going to be criminally charged, but they should be vigilant in laying charges and not saying to people, "Go off to Family Court and get a restraining order." But even when a restraining order's been made in Family Court, I think the police can be directed to enforce those orders, because they are orders of this court.

Those are my submissions. Ms Sager will address the issue as it relates to shelter victims.

Ms Melanie Sager: The previous speaker from the CBA made a very important comment, in my opinion. She said that the current manner in which restraining orders are made in the Family Court generally works. There are some problems to be sorted out, but generally it works. Ms Reilly is saying that this bill is just going to overcomplicate the whole procedure and it's going to create more problems than already exist now.

Ms Reilly finished by addressing the police forces. The problems that the speaker from the CBA referred to

in my opinion could be addressed effectively with the assistance and co-operation of the police. Too many times the police are saying, "Go to Family Court and get a restraining order," as opposed to laying charges. They're saying, "This order is too old. We can't enforce it. This order doesn't say that we have the authority to enforce it." The issues around restraining orders and making them effective, in my opinion from dealing with many women who are in shelters for abused women, centre around the assistance, or lack thereof, from the police. From my perspective, and that of women who are residing in shelters, a lot of the problems that exist with the current structure which are not that serious could be resolved with the education of the police forces and what they should and can do.

Ms Reilly covered a lot of the comments I was going to make about the costs associated with the new procedure being proposed. With respect to the costs Ms Reilly spoke about, I just want to talk a bit about that because, in my experience, I can confidently say that over 95% of my clients who are in shelters are on legal aid. If they are going to have to proceed potentially on two legal aid certificates, depending on which court this interference order will have to be obtained, I can't even begin to imagine the costs associated with that. Most of my clients, and I am obviously speaking from my experience, who are in shelters are asking me to proceed to court to deal with custody and access and support issues and potentially restraining orders. Most of those clients don't have substantial property issues, so we don't go to the Superior Court of Justice. If these women are going to have to apply for legal aid and legal aid is going to accommodate them, I can't imagine where that money is going to come from.

Furthermore, I can envision it being suggested by lawyers, "Do you really need a restraining order? Is this a serious issue? Are you really in danger?" I can tell you, a lot of lawyers who accept legal aid do not like to go to the Superior Court of Justice because the times granted to them on legal aid certificates are maxed out long before anything is done. The Ontario Court of Justice is far more efficient when you're dealing with custody and access and support issues. So you might have lawyers saying to the victim, "I don't know if we're going to be successful. You should reconsider. Do you want it to go really quickly? In the Ontario Court of Justice, where I can hopefully get you custody really quickly, you're going to have to give up that right to an intervention order." Now this will happen. Lawyers do not particularly like going to the Superior Court of Justice when their client is legally aided. Some of them don't; maybe a lot. So that's going to be a big problem.

Then that raises the question of putting the decision back in the hands of the victim, which we were supposed to take out. The justice department years ago tried to take that decision out of the victim's hands. The abuser was to be arrested and charged, if appropriate, and prosecuted with or without the assistance of the victim. Are we putting that decision-making back into the victim's hands, which is a huge step backwards? In terms of Ms

Reilly saying that you won't achieve what you're trying to achieve, that's a big question you have to ask. With respect to women in shelters, are they going to place the call? Who's going to place the call in the middle of the night? Are the police going to dial the number or are they going to offer that to the woman? Are they going to say, "Would you like to do that?" Again, the directive was to charge and prosecute abusers with or without the co-operation of the victim. I think that this proposed legislation is definitely taking a large step backwards with respect to that issue.

One other point I just wanted to mention is that I also deal with a lot of women who don't speak English as a first language and I'm dealing with a lot of interpreters. In terms of emergency intervention orders, will there be interpreters available? Who will make them available? How will they possibly interpret over the telephone? The same goes with respect to shelter staff. They're actively involved in assisting these women. Are they going to be able to speak to the justice or the judge on the phone or will that be inappropriate under the circumstances? Again that goes back to the issue of putting the decision back into the victim's hands, whether you really want to do that. Those are my submissions.

The Chair: Thank you very much. We have about three minutes for questions.

Mr Tilson: Clearly the system we have is not working. People have said that it is working. Well, it's not working. We've had some horrific situations that have gone on, even this past summer, just awful scenes. One of the things that the federal legislation doesn't do—in fact, there's no legislation—is deal with emergency situations. That's one of several things that this legislation is offering, the emergency seven days a week, 24 hours a day. Ms Reilly has criticized that in a number of ways and the government, in fact members of this committee, will take those comments under advisement, although I will say that certainly since the spring of 1999 the court has served all restraining orders where the applicant was not represented and they are already paying this through the court services division. On that point alone, I'm surprised you're saying that this legislation is a step backwards. For those emergency situations—Ms Reilly could talk about how the courts are congested. Here, with a designated justice of the peace, you can get an order just like that.

1700

Ms Reilly: I guess one of my questions is, and it's more of a practical one, who's going to type that order at 2 in the morning? Until that order is created and served, it's not existing.

In terms of how the system is working now, the problem is enforcement of the orders that are being made. That's where I see the problem, in terms of the orders being made in the Ontario Court of Justice where there have been restraining orders made, and the enforcement. In terms of the 24 hours, my comments were more from a practical point of view. You don't have a court system that's working 24 hours a day.

Mr Tilson: I don't mean to be overly critical. You're obviously offering good suggestions and I know those comments will be made, those practical comments. But I am concerned when you say that the bill is a step backwards. I can't agree with you on that. With these terrible situations that have occurred which we have all read about in all of our communities across Ontario, something has to be done and this bill is a step. It's not the solution, but it's a step in the right direction.

Ms Reilly: But I think where the bill has problems, for me looking at it, is that it's very complicated. You're dealing with someone who's been victimized. They need a simple procedure and this is not simple.

Mr Tilson: There's no question that your comments about education are legitimate. The government is going to have to figure out ways of getting the police and peace officers educated, the lawyers educated, the shelter people educated and the public educated. Those are legitimate comments on these processes, and I hope the shelters will be part of that process.

The Chair: We have run out of time and we really are on a very short leash this evening. Thank you for your presentation.

Mr Kormos: Mr Tilson used our time?

The Chair: Yes, Mr Tilson used your time, but I will make sure that you get your time, Mr Kormos.

ADVOCATES' SOCIETY

CRIMINAL LAWYERS' ASSOCIATION

The Chair: The next presenter is Ms Alexandra Chyczij, executive director of the Advocates' Society. Good afternoon.

Ms Francine Sherkin: I know for sure my name's not right there. I'm Francine Sherkin. I'm on the board of directors of the Advocates' Society and I'm here representing the family law section and the criminal law section. Alexandra did send in our submissions that hopefully everybody has a copy of and which I'm just going to review today anyway.

Mr Kormos: I'm sorry. Excuse me. The reference to the submission, that's the—

Ms Sherkin: We have a letter dated October 23.

The Chair: It was handed out yesterday, Mr Kormos.

Mr Kormos: OK, that's what you referred to. I just wanted to make sure. Thanks.

Ms Sherkin: With me is Anthony Moustacalis. He's from the Criminal Lawyers' Association. I know you're tight on time, so the good news is that we're going to be short. He's going to be using part of the short amount of time that I have today.

As I mentioned, I am here representing the family law and criminal law committees of the Advocates' Society because we have a joint submission. I am a lawyer who has been practising for 23 years in the litigation area, mostly in family law.

As set out in the letter of October 23, we are distressed at the speed with which this legislation has been

introduced and the fact that there has been virtually no consultation with the criminal and family law bars. We learned only recently that Bill 117 had been introduced on September 27 and as of this date has already progressed through second reading and several days of committee hearings. In light of the importance—and we do see it as very important—and the complexity of the issues and the legislation involved, it is impossible for us to responsibly review the bill and to make meaningful comments about it within such a short time frame.

There is no doubt that the bill has progressive aspects, and we certainly applaud that, such as the extension of protection to common-law and same-sex spouses. However, there are difficulties with the bill which may result in more problems than benefits. We are concerned about the effect of the draft legislation on both parties to the proceeding contemplated in the legislation. The bill is intended to protect victims of domestic violence. It is our view that Bill 117 may fall seriously short of this goal and may in fact make it more difficult to make victims of violence safe. This is a shared view of both the criminal law and the family law committees of the Advocates' Society who represent both women in need of protection and persons against whom such orders would be made. Because of our concern about the far-reaching implications of this legislation for the public, we would very much like to participate in a meaningful consultation process. Unfortunately, for us to date, this has not been such a process.

We are strongly of the view that this legislation would benefit from detailed review and input from both family and criminal law practitioners to make sure that it's going to make things better and to make it work. We are concerned that without greater co-ordination between the two levels of court and without a balancing of the family and criminal law areas, injustice will result to families, to children and to litigants.

As Bill 117 presupposes amendments to the Criminal Code of Canada, we submit that, in light of the recent election call, such amendments will not be forthcoming in the near future and therefore there is time to have a better consultation process, a broader one. We respectfully ask that you extend the time for the hearings of the standing committee on justice and broaden the consultation with the various stakeholders, such as our committees. We trust that we will have further opportunities to be heard on this important issue and hopefully look forward to the response.

The Chair: Thank you, Ms Sherkin. Did you wish to add, Mr Moustacalis?

Mr Anthony Moustacalis: Yes. This is echoed in the letter, if I can just read it for the record. It's addressed to the Attorney General of Ontario.

"Dear Mr Attorney:

"Re: Bill 117—Domestic Violence Protection Act

"The Ontario Criminal Lawyers' Association, is one of the largest specialty legal organizations in Canada, comprising about 1,000 members. The association is a

strong voice for criminal lawyers and everyone concerned with the quality of criminal justice.

"The Criminal Lawyers' Association would have liked an opportunity to explore the issues raised by this important legislation and provide meaningful input; however, we are unable to do so because of the shortness of notice regarding hearings before the standing committee on justice.

"We have reviewed the letter dated October 23rd, 2000, from the Advocates' Society criminal law committee chair and family law committee co-chair"—which of course was just read to you—"and wholeheartedly share their views. We would also respectfully request that you extend the time for hearings of the standing committee to allow for thorough review and consultation on this legislation.

"Yours very truly,

"Alan D. Gold

"President."

That's our statement. Thank you.

The Chair: Thank you for being so brief. There may be questions. Mr Bryant?

Mr Moustacalis: I think we're going to decline questions and just deal with our statement.

Mr Kormos: Stick around. This will be the better part of these hearings.

Mr Moustacalis: Thank you anyway.

Ms Sherkin: We'd love to next time answer questions, but we haven't had time.

Mr Moustacalis: Our position is stated in the letter, that we haven't had an opportunity—

Mr Kormos: But by leaving, you deny us the time to take shots at the government.

Mr Tilson: And we you.

Ms Sherkin: You can do that without us.

The Chair: I shall make sure you have lots of time with the next two delegates, Mr Kormos.

Thank you for being so brief.

ANNE COOLS

ROGER GALLAWAY

The Chair: The next delegate is Senator Anne Cools. We are a little early, but if you are ready we'd love to hear from you. Good afternoon.

Senator Anne Cools: Good afternoon. I would just like to say that it's a pleasure to be here. As you know, I'm a senator from Ontario, so it's especially nice to be at home. Mr Gallaway and I had very short notice to pull our thoughts together, but we thought that if we engaged in some shared time we could perhaps be a bit more effective. Having said that, I think Mr Gallaway should proceed.

The Chair: Before you do, I gather that you would like to combine your time so that the two of you can speak for up to 40 minutes, including questions to the Armstrong commission?

Senator Cools: Yes, especially with questions.

The Chair: Is that OK with members of the committee? No problem? Please proceed.

1710

Mr Roger Gallaway: I will start by saying my name is Roger Gallaway and I'm the member of Parliament for the riding of Sarnia-Lambton.

My presence here today and my observations regarding this proposed legislation come not as an expert in any particular discipline but rather as a member of Parliament and the former co-chair of the special joint committee of the House of Commons and Senate which was created in 1998 by resolution of both chambers to study the issues of custody and access. I have heard, I must say, an extensive number of witnesses—more than 550—on this subject and related topics, and to this day I continue to hear from hundreds of individuals.

First, I think I can say that it goes without saying that domestic violence is a cruel and sad fact of human relationships. Second, the Fraser Mustard report commissioned by Premier Harris documented the evidence that violence can have on children, especially those under the age of four years. Finally, I'd like to say that society in general and parliamentarians have a duty to protect all Canadians—and I want to stress "all"—from this phenomenon.

There are two salient questions which remain. The first is, what is the best mechanism to effect this protection, and secondly, who are the perpetrators and who are the victims?

The answer to question 1—what is the best mechanism of protection?—is, I presume, in your opinion or in the opinion of some here, before us in Bill 117. Allow me to first state the obvious. We are in a federal state which has defined divisions of power. It's clear and certain that the federal Parliament has the right and authority to legislate with respect to dissolution of marriage, that is, divorce, and ancillary matters such as custody and access, as well as criminal conduct. Similarly, provincial Legislatures can legislate in matters such as common-law relationships, division of property, whether a marriage has occurred or not, as well as the custody of and access to children of common-law relationships.

Having said the obvious, I would also note that there was great pressure of a political nature on the special joint committee to insert criminal sanctions into amendments to the Divorce Act, yet that law was never designated to be a branch of the criminal law. However, in my opinion, Bill 117 has succumbed to this level of pressure under the guise of the Family Law Act. In subsection 1(2), paragraphs 1 through 6, there are various definitions of domestic violence. All of these six definitions, if they did in fact occur, are clearly criminal acts. For those who commit such acts, the Criminal Code should be invoked to ensure an appropriate penalty is applied.

Allow me to propose an example. An individual calls a former spouse and threatens bodily harm. That's the allegation. The police are alerted. The individual is apprehended, charged and brought before a justice of the

peace for a bail hearing. At that hearing, it is deemed that the accused is high-risk and is kept in custody pending trial. I should tell you that this is a real-life example of an individual who, nine months after the charge has been laid, is still in custody in a provincial jail pending trial. Without descending into the realm of being absolutely anecdotal, it is clear in this case that criminal law does and can work.

Allow me one further example. An allegation of physical assault of a child is made in the course of a divorce hearing involving custody. The allegation is against one of the parents, made by the other parent. The judge denies any contact between the child and the accused parent until a hearing on the issue—that is, on the assault—can take place. Such hearing eventually occurs, at which time the judge finds that there is no proof whatsoever regarding the accusation. He then orders that the parent be given access. That parent, in attempting to exercise this court-ordered access, is again denied visitation because a child protection worker said no. In fact, the social worker, notwithstanding the court hearing, still believes that one parent, the accused, committed what is a criminal act.

The outcome of this real-life matter has yet to be determined by the courts. However, I think it does raise the issue of how other legislation, in this case child protection legislation, can be used to frustrate the process of the courts and the orders of the courts. Quite simply, although a criminal allegation has been made but not found, a provincial law designed to protect children has short-circuited the entire process, all in the name of protecting someone from alleged family violence.

These two examples exemplify the two levels of protection of those who are said to be victims. In the first case, the accused has been removed from society pending a criminal trial, while in the second case, the accused has been acquitted yet still found to be an accused, to be subjected to yet another judicial process.

These two examples beg the question: why, in the face of all this legislation which exists, is yet another law necessary? Provincial Attorneys General have the authority to issue directives in terms of policy to their crown attorneys to become more stringent. Provincial Solicitors General have the authority to issue directives by way of policy statements to police forces to become more stringent. Why, then, is the Criminal Code being swept aside in favour of this bill? Is the weakness in the law as it is presently written, excluding this bill, or is the weakness in the administration of justice? I would suggest it's in the latter case.

The example of the incarcerated former spouse given earlier leads me to ask yet another question. Let us presume for discussion purposes that at a criminal trial the accused is acquitted, that is, a court finds there is no evidence whatsoever that such a threat occurred. Under Bill 117 before you here, an application for a restraining order could be made notwithstanding that acquittal. Unlike the celebrated O.J. Simpson trial where a criminal acquittal was followed by a civil action for damages, this

law would give the original complainant yet another avenue to pursue outside the criminal law.

Allow me to ask a final question. If that application for an intervention order is denied, what remedy will the accused have? Quite simply, why do you not devote the resources at the first level, that is, the administration of justice, rather than creating a double-jeopardy scenario?

With respect to the second issue—who are the victims and who are the perpetrators?—I would now defer to my colleague Senator Anne Cools.

Senator Cools: I would like to begin by saying that I was deeply impressed with the evidence of some of the previous witnesses, in particular lawyers. I just thought perhaps I could add my voice to support the wishes of Cynthia Wasser of the Canadian Bar Association and the other lawyers who are essentially asking for more time to consider this legislation with a lot more care. I just thought perhaps my voice could add a little bit of influence to that.

I have not had as much time as I would have liked to prepare. However, what I offer to the committee is some decades of experience on the ground in this particular subject matter. As you know, Mr Gallaway and myself served on the joint Senate-Commons committee in respect of child custody and access, so there is a sizeable amount of experience embodied between the two of us.

1720

Honourable members, I come here to ask for fairness, balance and equilibrium in this law. I do this because the legal and social condition around domestic violence is one that I can only describe as a heart of darkness. This condition is rendered more difficult by official government disinclination to accept the obvious fact that violence and aggression are human problems, not gender problems. I shall ask you to examine the proposition that men and women are equally capable of vice and equally capable of virtue, and that virtue is a human characteristic, not a gender one.

The committee, as a committee, must seek in legislation to reject any notion of the moral superiority of women and the moral inferiority of men, or that men are somehow morally defective. The proposition of women's inherent virtue and men's inherent vice has dominated family and criminal law for the past decade. It has wreaked havoc and has bequeathed tragedy. I ask committee members to examine the data, to examine the empirical evidence in respect of violence within intimate relationships, and to consider the possibility that the issue of domestic violence has been falsely framed or wrongly framed as violence against women.

Bill 117 tells us that it is about the protection of the life and limb of persons who are described as victims of domestic violence. On September 27, Attorney General Flaherty told the assembly that Bill 117 is "to support and protect people, primarily women and children, who are at risk of domestic violence." He said, "We are committed to ensuring that abusers are held accountable for their crimes." Mr Flaherty has clearly thought about crimes. Mr Flaherty has used the term "crimes." I note

that the term “crime” is very clear here. Bill 117 is entering into a foray in criminal legislation.

This bill is about the strength of allegations. I assert that this new proposed intervention order is not a strengthened restraining order as suggested but is a totally new form of order. It is a new constitutional creature unknown to our constitutional order and it is innocently titled an “intervention order.” I would submit to you that there is no such legal entity. This intervention order confers exceptional, drastic and unprecedented powers on a judge, without clear statutory enactments to found, enable and create the power.

This new intervention order will marry existing restraining orders under the powers of the obligation of citizens to keep the peace and observe the law in respect of life and limb, that is, the Queen’s peace, to an unknown constitutional power to expropriate a person’s property rights and to attribute those rights to another. In particular, I speak of the contents of the intervention order section, subsection 3(2), paragraphs 8, 9, 10 and 11. Paragraph 8 provides for intervention orders to grant exclusive possession, stating, “Granting the applicant exclusive possession of the residence shared by the applicant and the respondent, regardless of ownership.”

Bill 117 will circumvent the Family Law Act and give applicants a shortcut to the acquisition of family law property rights. It will vest a legal estate, a property interest, in the applicant to the exclusive possession of the residence. And they say “residence” in the bill, in sharp distinction from the language “matrimonial home” in the Family Law Act. The Family Law Act vests a joint legal estate in the matrimonial home in both spouses and allows either spouse to obtain exclusive possession of the matrimonial home by virtue of its provisions of limiting the other spouse’s exercise of their right to possession of the matrimonial home. The authority for that exclusive possession is based in the joint legal estate of both the parties. This bill has no such joint legal estate and further supersedes the concept of the matrimonial home. This is totally new. The effect of this bill, I will propose, is a modern revival of the ancient power named the law of forfeiture. I would ask honourable members to wrap their minds around that particular proposition.

In 1971, Erin Pizzey started the first shelter in the world for women affected by domestic violence in Chiswick, England. In 1974, she wrote the very first book on domestic violence, called *Scream Quietly or the Neighbours Will Hear*. Erin Pizzey, in a 1998 article in the UK’s *Observer* newspaper, wrote the following, talking about her first experiences at her refuge. She said, “Of the first 100 women coming into the refuge, 62 were as violent as the partners they had left. Not only did they admit their violence in the mutual abuse that took place in their homes, but the women were abusive to their children.”

Erin Pizzey has written about women, and also men, who are prone to violence, or violence-prone. Many are disinclined to receive the evidence that women are violent, yet we all know that infanticide is an exclusively

female crime, as the Criminal Code in section 233 tells us. This disinclination shields female violence from treatment and therapy, from correction and prosecution. The effect is to cloak women in innocence—a successful strategy for claims in courts of law.

The American scholars on domestic violence, including Drs Murray Straus, Richard Gelles, Suzanne Steinmetz and Jan Stets, all tell us that the domestic assault rates of men and women are equal and that mutuality, symmetry and reciprocity are the norm. Men and women hit each other at equal rates. Men and women initiate violence against each other at roughly equal rates. These studies have been replicated in Canada by the Canadian scholars Drs Kim Bartholomew, Merlin Brinkerhoff, Donald Dutton, Eugen Lupri and Reena Sommer. Dr Dutton appeared before the special joint Senate-Commons committee on child custody and access on May 19, 1998, and he testified at page 25:53, “I wrote a paper in 1994 called *Patriarchy and Wife Assault: The Ecological Fallacy*. In that paper I essentially criticized sociological and feminist views of wife assault and of family violence.”

Dr Dutton further told the committee, “I also called attention to the fact that in research that had been done on homosexual relationships, and particularly on lesbian relationships, the abuse rates for physical assault, sexual violence, sexual abuse and psychological abuse were all higher than those reported in heterosexual relationships, and that this was a difficult finding to reconcile with a feminist point of view, since we’re dealing obviously here with relationships between women.”

I would like to place a case before you for your consideration. This is a 1998 case of *Regina v Ghanem* in the Provincial Court of Alberta. Mr Ghanem had been charged with assaulting his wife—a domestic assault. He was tried and acquitted of this particular charge. This case is very relevant because under Bill 117 he would find himself back in court after an acquittal. Mr Ghanem’s wife charged him in an effort to imperil him in the divorce proceeding; this is very well documented in the judgment. About the defendant’s alibi, because he was elsewhere when the assault was supposed to have taken place, Judge Fraser stated at paragraph 2, “It was also disclosed to the police officer immediately upon being told of the allegations. The officer chose not to investigate the alibi and instead just laid the charge. Apparently he didn’t feel he had any responsibility to do so.”

Judge Fraser stated his reasons for acquitting Mr Ghanem. He said, “I find the evidence of the complainant and her mother to be contradictory, confusing, contrary, conflicting, irreconcilable and quite frankly, false.”

About the zero tolerance policy, Judge Fraser stated at paragraph 21, “I want to make two further comments because one is curious as to how a man could be falsely accused in these circumstances right up to and including a trial. The reasons are quite clear to me and disturbing. First, the police apparently have a policy of zero tolerance in domestic assault cases. Any zero tolerance policy is dangerous. It is especially dangerous when it is not

properly applied." I have copies of that judgment if honourable members would be interested.

1730

Honourable members of the committee, I have done a lot of work on the question of false accusation. The particular issue around false accusation that has preoccupied my mind, and it deeply disturbs me because it is such a painful and terrible thing, has been the fact that within child custody and access disputes, quite often, as a strategy for obtaining sole custody, there has been a plethora over the last 10 years of the use of false accusation as a strategy.

I submit to you that exclusive possession of the home, custody of the children, spousal and child support are sufficiently desirable and profitable to sometimes found deceit, deception and deviance. I would like to offer the committee the findings of the 1995 Ontario Civil Justice Review and also the Manitoba Civil Justice Review of 1996 in respect of their findings on family law. I have this material here before me if the committee is interested. In Manitoba, for example, the task force report stated: "The task force heard horror stories about the traumatic impact on the accused person, on the immediate family and children affected by malicious false allegations designed to achieve sole custody, prohibit or restrict visiting privileges, and to punish the other parent."

Here at home, we had the Ontario Civil Justice Review, co-chaired by Mr Justice Robert Blair. These same sorts of concerns are flagged and raised. As a matter of fact, Mr Justice Blair at one point said that civil justice in Ontario is in a crisis. I have studied this matter and I have reviewed some 52 cases, which I will be quite happy to share with you. I have here in my hands a list of 52 judgments from across the country of confirmed false allegations—not false allegations that were made, but false allegations that were found. These accusations are of mostly child sexual and physical abuse, mostly made by mothers, mostly against fathers, and the context, again, is mostly child custody and access proceedings.

Honourable Senators—honourable members—

Mr Kormos: We have elections.

Senator Cools: Do you? I want you to know that we do too.

Mr Kormos: Mr Gallaway does.

Senator Cools: I know who loves an election.

Mr Guzzo: It's just a matter of time for you, Mr Kormos.

Senator Cools: Very good. Mr Guzzo is—
Interjections.

The Chair: Order, please. That was a caution to committee members, not to you, Senator Cools.

Senator Cools: Thank you.

Mr Guzzo: She just doesn't look at us when she scolds us.

Senator Cools: I think she only scolds you when you need to be scolded.

Anyway, these are 52 cases. I have listed the cases, case by case, by court, by judge, and even by date of the

judgment. I tell you, some of these judgments are chilling. I would like to read a statement from one of the judges because it is at home here in Ontario. The judge is Judge Fisher. In the 1995 case of A.L.J.R. v. H.C.G.R., Judge Fisher stated at paragraph 17: "I find that the father committed no physical or sexual abuse and the mother programmed her child to give fictitious complaints."

At paragraph 23, the judge confessed: "When, in the past, I have read evidence of alleged abuse, I have decided to err on the side of caution and order supervised access. Judges often do this. I confess to have been taken in by the mother's evidence."

Honourable members, I think that's quite a staggering admission and a confession for a judge to make.

The condition that I spoke about around these accusations is essentially the condition that women must always be believed and that men must always be doubted, because women are virtuous truth tellers and men are liars of dubious character, all lurking to hurt, maim, rape and kill their wives and their children. In a decade, we moved from "father knows best" to "fathers molest."

Honourable members, I would like to conclude by saying that Bill 117 seeks to deny women's violence. It cloaks women in innocence, and vests mere allegations of domestic violence with aspects of criminal findings, while it stealthily vests the accuser with new property entitlements and also new child custody and access entitlements. It then attempts, under the disguise of a prohibition, to vest the accuser with a potential immunity, by section 16, from prosecution for perjury. This extraordinary power is legislatively achieved by virtue of a novel judicial order call an intervention order, sometimes obtained without notice, which can then oust—the bill says "prevail," but in parliamentary language the term is "oust"—orders made under the Divorce Act, the Family Law Act and the Children's Law Reform Act. As I said before, such a judicial order, such a power, is unknown to the law in Canada. Further, no provincial statute can oust the Divorce Act. That is a jurisdictional question that was raised earlier.

This bill is a monumental foray into criminal law. Simultaneously, it lacks the protection of due process and the higher standard of the burden of proof required by criminal law. It lacks the protection owed to one accused of violence. Violence is clearly an offence in criminal law, not civil. In addition, by subsection 1(2), the definition of "domestic violence" is so broad, contrary to our constitutional framework, which usually requires that offences be defined precisely and narrowly. Further, subsection 1(3) tells us that on a balance of probabilities, a finding of domestic violence can be made without a criminal investigation, without a criminal finding or without a criminal test of credibility, and even sometimes without a police investigation.

Bill 117 is about criminal law and the consequential forfeiture of and the creation of new property rights. As a consequence of allegations of crime made and found without criminal due process, the ancient law of forfeiture is revived. An accused forfeits property rights and

cedes them to an accuser. This legal scheme, as I said before, is unknown to constitutional governance in Canada. I think the committee and the Attorney General should exercise some pause and some caution and slow this bill down, receive counsel and find out exactly what is going on in this bill.

My worry about this bill is that it will not do very much to protect genuine victims who are in pain and anguish and who are suffering, and will do a lot to strengthen opportunities for what I would call unscrupulous individuals who will want to use the law in some unscrupulous way.

The heart of darkness, as I said before, that results in the twin tragedies of murder and suicide—and let us remember that suicide, after all, is self-murder—needs light. It really needs very serious study and needs a lot of light. I would submit to you that it needs no additional darkness.

I have spent my life working on this subject matter. I know a lot about domestic violence and I know a lot about human beings when they are wrapped in these conflicts, buttressed quite often by hosts of other entanglements and pathologies. I would also submit to you that there are many different forms of domestic violence. The most frightening and the most terrifying form of domestic violence is the one where, unfortunately, within all of these other conflicts, homicidal or suicidal impulses also come into play. I tell you, I mean it when I say this is the heart of darkness. I thank you.

The Chair: We have about eight minutes for questions.

1740

Mr Tilson: You've indicated that this legislation is an encroachment upon the Criminal Code, although I draw to your attention that there are other provincial jurisdictions and provincial-type jurisdictions around the world that have similar legislation to that being proposed under Bill 117, namely, Manitoba, Alberta, Prince Edward Island, Saskatchewan and the Yukon, many American states, New Zealand and Australia. I don't know whether you're aware of those, but you might want to check those out.

Both of you have said that you've spent a considerable number of years reviewing the topic of domestic violence. Can you tell me what new recent legislation the federal government has undertaken with respect to the topic of domestic violence?

Senator Cools: What new legislation?

Mr Tilson: Yes.

Mr Gallaway: I think the basic question you're asking begs the question, is the present legislation adequate? I cited one example, and I don't want to be anecdotal about it, but I would say to you that the present legislation is adequate, provided the resources are given to police and crown attorneys to get on with these allegations, which I would suggest to you, Mr Tilson, are in fact criminal offences.

Just because a new law is put forward, whether it be in Ottawa or in a provincial capital, does not by definition say it is in fact an improvement. It's just yet another law.

Mr Tilson: Senator Cools has spent a great deal of time talking about domestic violence. I agree; I believe we do have a problem with domestic violence, and it's not just men against women. It's men against women; it's women against men; it's date rape; it's the issue of elder abuse. Very few people in these hearings have referred to the topic of elder abuse. There's all kinds of it.

I just asked a simple question: with your experience—and I appreciate that—what draft legislation is being proposed by the federal government to deal with any of these issues?

Mr Gallaway: As you know, the House is dissolved. There is no draft legislation.

Mr Tilson: I understand that.

Mr Kormos: Gentlemen, will you both lower your hind legs?

Senator Cools: Mine are in pretty good shape.

Mr Tilson: Am I still on the air?

Senator Cools: The real question is that the current position of the federal government obviously is that the Criminal Code is alive and well and working quite adequately. That would be the position. I do not speak for the government, so I do not feel that I have to excuse or apologize. But that would be the position of the federal government.

The question that is hidden in yours is, why is there a need for a new amendment to the Criminal Code? You have not satisfied me that there is. This particular bill does not satisfy me that there's any need for a new addition to the Criminal Code. You inform me that there's similar legislation to this in other provinces. I am here to speak about this particular legislation. Yes, I am pretty well informed on legislation in the other provinces, but I was speaking to this one, and I say to you that this particular one is insufficient because it has clearly trenched on federal territory.

Mr Bryant: You've raised an empirical question. You can't be expected to have been here for it, but earlier one of the submissions, by the Metropolitan Action Committee on Violence Against Women and Children, cited a Stats Canada study to the effect that 86% to 93% of victims of violence are women and 90% of the perpetrators are men. We can ask legislative research to find the year of the StatsCan study. Stats Canada is hardly—

Senator Cools: Are you speaking about the 1993 so-called violence against women survey? Is that the particular study? Stats Canada puts out these studies quite frequently. Which one are you referring to?

Mr Bryant: I'm sorry. The study was referred to in a previous submission. Let me put this to you: What do you say to those numbers?

Senator Cools: I don't know. You would have to cite for me the particular study—

Mr Bryant: Fair enough.

Senator Cools: What I would say to you is that domestic violence is a problem that affects a small minority of couples in this country. What I would also say to you is that the strongest predictors of domestic violence are usually youth and common-law relation-

ships, chronic unemployment and usually other sets of social and emotional problems. I would also say to you that at least 75% of men are not violent in their intimate relationships.

When we are looking at deviance, I think we have to be crystal clear that we are looking at deviance and focus in on deviance. I guess that is what I'm trying to say. If one wants to deal with deviance—and there is very real deviance. I was on the National Parole Board. I tell you, I've read a lot of cases on deviance. Let us make sure that we draw the law narrowly enough and brilliantly enough to capture in that net the deviance we're wanting to capture and to leave out the rest of the majority of ordinary citizens. I would submit to you that the majority of men and women involved in divorce and custody and access disputes are not in that small group of people whom we would call violent couples.

The Chair: You have one more minute.

Mr Bryant: You're obviously familiar with the bill.

Senator Cools: Yes, I read it quite carefully.

Mr Kormos: Mr Bryant can have my time.

Mr Bryant: There's no section in the bill that's gender-specific, is there?

Senator Cools: That is the interesting thing. It doesn't have to be, because the Attorney General has said it is and all the witnesses have been saying it. It is very clear that what has happened in Alberta and what has happened in the other provinces where similar legislation has been introduced is that the weight of the law will be felt by the male in the relationship.

Mr Bryant: I heard that submission—

Senator Cools: I think we can all agree—

Mr Bryant: —but there is no gender-specific reference in the bill, is there?

Senator Cools: It is unnecessary to do it because there's a culture, which is the point I was trying to make.

Mr Bryant: I'll take that as a "no."

Senator Cools: I was trying to appeal to you to say that this bill is being administered on those grounds and there's a culture that is going on. Believe you me, if you've ever counselled or sat between one of those couples, it is very frightening.

The Chair: Thank you, Ms Cools.

Mr Guzzo: Madam Chair, may I just say on behalf of the committee, we thank you both very much for being here. I know you're both busy. Mr Gallaway, I'm sure you have other things on your mind that you could be handling today and it's very much appreciated that you would take the time to be here.

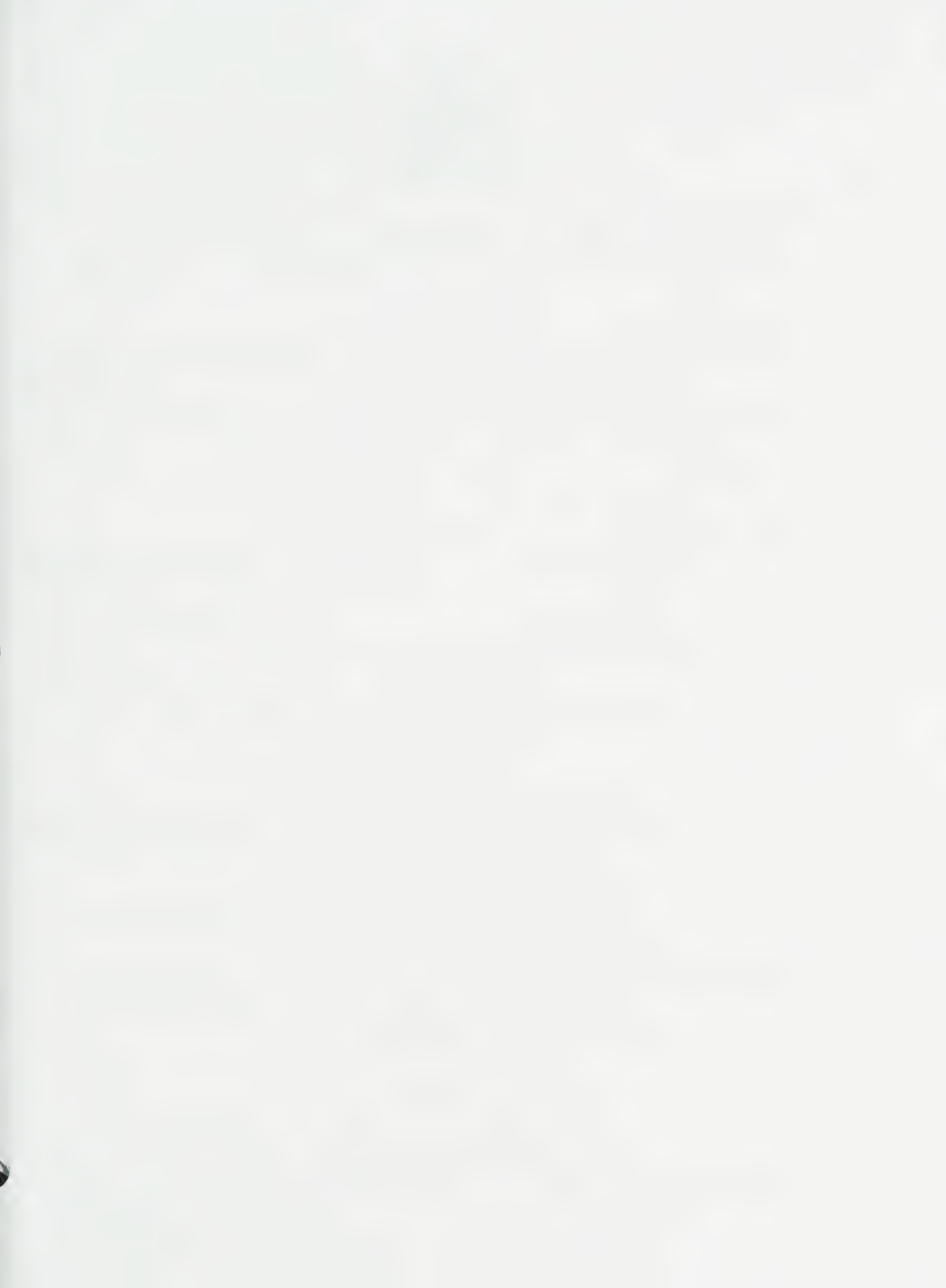
Mr Gallaway: Thank you, Mr Guzzo. I want to say how pleased I am that this all occurred on Halloween evening. It would be very difficult to campaign tonight.

Senator Cools: I would like to close by saying that one lauds every effort to correct social problems, but I think we have to be crystal clear that we're defining the problems adequately. I notice nobody responded to the question that I raised—but that's all right—about the exceptional power, invoking the old powers under the law of forfeiture, because, for those of you who may be setting out to try to correct or amend it, what is really wrong with this bill is the marriage between the criminal powers and the civil powers. If the restraining orders had been strengthened in respect of protecting life and limb, it would be an entirely different matter, but the real problem with this bill is throwing in the additional property considerations. Thank you very much.

The Chair: Thank you both, Senator Cools and Mr Gallaway, for being here.

Ladies and gentlemen, that does conclude the public delegation portion of the committee deliberations. I would ask committee members to please remember that November 7 at noon is the deadline for amendments and there will be clause-by-clause consideration on November 14 at 3:30 in this room. Thank you for your patience.

The committee adjourned 1749.



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Mardi 14 novembre 2000

Standing committee on justice and social policy

Subcommittee report

Domestic Violence
Protection Act, 2000

Comité permanent de la justice et des affaires sociales

Rapport du sous-comité

Loi de 2000 sur la protection
contre la violence familiale



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Tuesday 14 November 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Mardi 14 novembre 2000

The committee met at 1535 in room 151.

Clerk of the Committee (Mr Tom Prins): Honourable members, it is my duty to call upon you to elect an Acting Chair. Are there any nominations?

Mr Toby Barrett (Haldimand-Norfolk-Brant): My understanding is that both the permanent Chair and Vice-Chair are absent. I wish to make a motion. I wish to nominate MPP Marcel Beaubien to chair this committee.

Clerk of the Committee: Are there any further nominations?

Mr Peter Kormos (Niagara Centre): Yes. I want to nominate Tina Molinari, who has been an outstanding member of this committee and who deserves the extra stipend that a Chair is paid, the extra \$10,000 or \$11,000 a year on top of the \$78,000, which this government wants to increase by 42%.

Have they offered those same sort of salary increases to any of the staff at Queen's Park? Have they offered them to the people working downstairs in the cafeteria for close to minimum wage? I think not. If I could nominate one of those cafeteria staff for Chair, I would, but under the circumstances, and as a reflection of my confidence in and my affection for Ms Molinari, I want to nominate Ms Molinari, and I ask members of the committee to give careful consideration in terms of how they cast their ballot.

Clerk of the Committee: Do you accept the nomination?

Mrs Tina R. Molinari (Thornhill): Thank you, but I decline.

Clerk of the Committee: Are there any further nominations? There being no further nominations, I declare the nominations closed and that Mr Beaubien be elected as Chair.

Mr Kormos: Now you're into the big bucks, Marcel.

The Acting Chair (Mr Marcel Beaubien): Good afternoon, everyone. Thank you very much for your overwhelming, confidence in appointing me as the Chair of this committee. You'll have to bear with me here, but I guess the first order of business will be to—

Mr Kormos: On a point of order, Mr Chair: First, I want to congratulate you on your election, but I also want to lend my support to the proposition that you should be paid the stipend that is normally accorded a Chair, which is substantial, in addition to your minimum wage of \$78,000.

The Acting Chair: Mr Kormos, if I may?

Mr Kormos: One moment. I move before this committee that this committee recommend that you be paid such stipend in view of your performance of these duties today.

The Acting Chair: Mr Kormos, I would like to point out that I already chair the standing committee on finance and economic affairs, so I'm already paid as a Chair. I will gladly decline your offer. I don't think there is any procedure with this but—

Mr Kormos: Mr Chair, you won't be the first Tory to double dip.

1540

SUBCOMMITTEE REPORT

The Acting Chair: I will take the order of business task here today, and I think the first order of business is to read in the report of the subcommittee.

Mr Michael Bryant (St Paul's): I could submit it to the clerk if you wish it to be dispensed.

The Acting Chair: It probably should be read, I think.

Mr Bryant: OK, done.

Your subcommittee met on Wednesday, November 1, 2000, to consider the method of proceeding on Bill 128, An Act respecting social housing, and recommends the following:

(1) That the committee meet in Toronto on November 20 and 21 for the purpose of holding public hearings and that the committee will meet on November 28, 2000, for clause-by-clause consideration of the bill.

(2) That there will not be any ministerial presentations or opening remarks.

(3) That scheduling will be accomplished by means of three lists. Each party will prepare a prioritized list of proposed witnesses and provide this list to the clerk by noon on Wednesday, November 8, 2000. The clerk will ensure that each party has an equal number of witnesses.

(4) That the clerk have an advertisement placed on the Ontario parliamentary channel and on the Internet.

(5) That individuals will be offered 10 minutes to make a presentation and organizations will be offered 20 minutes to make a presentation.

(6) That the legislative research officer will prepare a summary of recommendations.

(7) That there will be an opportunity for each party to take 10 minutes to make opening comments at the beginning of the clause-by-clause process.

(8) That the deadline for written submissions is Thursday, November 23, 2000, at 12 noon.

(9) That amendments should be filed with the clerk by Thursday, November 23, 2000, at 12 noon.

(10) That the clerk has the authority to begin implementing these decisions immediately.

(11) That the information contained in this subcommittee report may be given out to interested parties immediately, as opposed to after the committee has voted on it.

(12) That the Chair, in consultation with the clerk, will make any other decisions necessary with respect to this bill.

The Acting Chair: Any further debate on the minutes of the subcommittee?

Mr Kormos: First let me comment on paragraph (11) "That the information contained in this subcommittee report may be given out to interested parties immediately, as opposed to after the committee has voted on it." I appreciate that that in itself isn't invalid, but it presupposes, if you're giving it out for the purpose of information, that that's what the committee is going to pass. It's an unfortunate turn of phrase, and I would hope that subcommittees in the future would refrain from that specific type of language, because it's kind of strange that you haven't voted on it but you're authorizing it to be released as if it had been voted on. Yet I understand the intention of releasing it is to let people know what the terms are going to be for the committee hearings. It's just one of those weird little things.

The Acting Chair: Any further comments on the subcommittee report?

Mr Kormos: I wasn't at this subcommittee, because Rosario Marchese from the NDP caucus is going to be dealing with this issue in the committee and, as I understand it—or at least I assume, which is always dangerous—he was there. I appreciate that I wasn't there and he was. But again, I find (1) that two days of committee hearings in Toronto only, in view of the fact that the issues around social housing impact in every community in this province and that many of the people impacted by these decisions are people who, for a number of reasons, are ill able to travel to Toronto—notwithstanding that the committee is prepared, I presume, to subsidize appropriate applicants for subsidy—is problematic.

(2) Two days, in view of the magnitude of the impact of this, is quite frankly objectionable. I will not support the subcommittee report.

Also, the third issue is of course the advertising. The parliamentary channel and the Internet: sorry, the parliamentary channel relies upon people having cable television, and there are still huge parts of Ontario where people don't have access to cable or, my friend, where people simply can't afford cable.

Interjection.

Mr Kormos: Well, who simply can't afford it, and the Chair says he can't afford it. I suppose that's one of his motives for seeking this 42% salary increase.

The other issue is the Internet. I understand the widespread use of the Internet, but I tell you there are a whole lot of families out there who don't have Internet hookups.

I am really concerned about what's become almost the steady practice of restricting advertising, and then of course committee clerks are compelled to report, "There wasn't much response to this bill." Well, no wonder, because the bill wasn't well publicized.

I recall a time here at Queen's Park, while appreciating the huge cost of advertising, when bills were well publicized via local newspaper advertisements. I've got to tell you that the public response was phenomenal, people with a genuine interest.

Those are concerns that I very specifically have about this, and it's for those reasons that I will be voting against it, notwithstanding that Mr Marchese may or may not have agreed to it, and if he did agree to it, notwithstanding the fact that he felt compelled to agree to it because of the nature of the leverage that the government has in any event.

Mrs Lyn McLeod (Thunder Bay-Atikokan): I also want to express my concerns about the subcommittee report, not as a criticism of the work the subcommittee did—and our housing critic, Mr Caplan, was sitting in on that subcommittee—but with the restrictions that the government has placed on the ability of the subcommittee to look at any further hearings.

I am particularly concerned about the limited amount of time. I think the restricted advertising concern that Mr Kormos has raised is a legitimate one. I don't think there will be any difficulty filling two days of hearings, because there's a great deal of concern about this bill.

My primary concerns are the limitation on the number of days of hearings and, second, the fact that it cannot go to communities outside of Toronto. I know the answer given to the subcommittee, because I did attend a part of that meeting, was that you cannot travel outside of Toronto when the House is in session. I do not believe that there is a compelling reason why this legislation has to be passed in this session. I know the government will feel differently about it, but if they wanted this implementation date of January 1, they had ample time to bring in this legislation so that the committee could have travelled in the summer, in that intersession, so that it could have reached other communities.

This social housing legislation has significant impact, Mr Chairman, on virtually every community across this province. I think it is a real denial of the opportunity to develop legislation that responds to a variety of needs in different communities that the legislation is being put through at a time when the committee is not able to travel.

Mr David Tilson (Dufferin-Peel-Wellington-Grey): I just want to draw to the attention of the opposition members that, first of all, the opposition members who attended that subcommittee, as I understand it, and I was not a member of the subcommittee but I am advised that the opposition members did not ask for additional adver-

tising and, second, that the three House leaders from the New Democratic caucus, the Liberal caucus and the Conservative caucus agreed to these minutes.

Mr Kormos: Mr Chair, a quick response: that's exactly why the subcommittee report goes to committee before it's approved. Otherwise, we wouldn't need committee approval; the House leaders could just decide it or the subcommittee reps could just decide it.

Mr Tilson: I'm just drawing it to your attention.

Mr Kormos: No, quite right, and this is why this committee's deliberation of the subcommittee report is so important, because we're a little bit of a check and balance on some of the machinations that go on in House leaders' meetings where leverage is applied.

The Acting Chair: Any further discussion?

Mrs McLeod: I wouldn't have spoken again except for the intervention of the parliamentary assistant. I believe it's the parliamentary assistant to the Attorney General, as opposed to the minister responsible for housing. I do want to make it absolutely clear that if the alternative to two days of hearings in Toronto is no days of hearings at all on this very important legislation, then of course we're going to agree to at least two days of hearings in Toronto.

That doesn't take away from the concern that this legislation should have been presented at such a time as it was possible for the committee to hold hearings in communities that are very strongly affected by the potential passage of this legislation.

The Acting Chair: No further discussion? If not, all those in favour of the subcommittee report?

Mr Kormos: A recorded vote, please.

The Acting Chair: Mr Kormos requests a recorded vote.

Ayes

Barrett, Chudleigh, Molinari, Tilson.

Nays

Bryant, Kormos, McLeod.

The Acting Chair: The motion is carried.

DOMESTIC VIOLENCE PROTECTION ACT, 2000

LOI DE 2000 SUR LA PROTECTION CONTRE LA VIOLENCE FAMILIALE

Consideration of Bill 117, An Act to better protect victims of domestic violence / Projet de loi 117, Loi visant à mieux protéger les victimes de violence familiale.

The Acting Chair: We'll now proceed to the clause-by-clause reading of Bill 117, An Act to better protect victims of domestic violence.

I see that under section 1 there is a Liberal motion submitted by Mr Bryant.

Mr Tilson: Point of order, Mr Chairman: I ask for the committee's permission—I trust they have no concerns that I'm sitting here along with two staff members from the Attorney General's office, who I'd like to identify to the committee—

The Acting Chair: You certainly may.

Mr Tilson: —and who may assist me if any members of the committee ask of me any questions of a technical nature that I feel perhaps it might be more appropriate for them to answer.

Immediately to my right is Anne Marie Predko, who is the policy counsel with the Ministry of the Attorney General. To her right is Joana Kuras, the executive lead in victims' services of the Ministry of the Attorney General.

The Acting Chair: Thank you, Mr Tilson. Mr Bryant, you can proceed with the—

Mr Bryant: Mr Chair, I believe we were going to do our five minutes at the beginning.

The Acting Chair: Five minutes, OK. I'm sorry.

Mr Bryant: We'll do it now?

The Acting Chair: We'll start with you, Mr Bryant.

1550

Mr Bryant: When the Attorney General first introduced this legislation, a ministerial statement was provided on September 27th. He said what we all knew to be true, that the legislation was to a large extent in response to some of the domestic violence tragedies that had taken place in the spring and summer. He said, "Everyone in this House is familiar with media reports of tragedies that have occurred as a result of domestic violence. As individuals and as legislators, we have a responsibility to do all that we can to prevent these tragedies and to keep families safe. That is why earlier today I introduced the Domestic Violence Protection Act."

The first reaction of the official opposition was, "Yes, of course we'll support any effort, however minuscule, to try and assist in fulfilling our responsibilities to prevent these tragedies and keep families safe, but this had better not be it." In particular, the concern was, and it's a concern that I still have frankly, that the Attorney General is using the tools at the Attorney General's disposal to address himself to these issues, but in fact what is needed is a far more comprehensive approach, as I know the Attorney General and the Premier know, all of which is incorporated in a report submitted to him in August 1999, the report by the Joint Committee on Domestic Violence, Working Towards a Seamless Community and Justice Response to Domestic Violence.

Our concern is that this is it. If this is it, then it is certainly no alternative to investments in community-based services, including emergency shelters, rape crisis lines and counselling services. So while, yes, we support this bill at second reading and, yes, I will have amendments which try to address what we heard in the committee hearings, I just want to again say that it is really the government's responsibility to implement this

report. It is not being implemented, I believe we heard during the committee hearings, and in any event this certainly is no response to this crisis in and of itself.

Next, Mr Chair, we heard from the Advocates' Society, who wrote a letter on October 23, 2000, and together with the family law and criminal law committees of the Advocates' Society and the Criminal Lawyers' Association, made a submission. The gist of it was, "Wait, because there's a lot of problems in this act." We often, I know, hear from counsel that there are problems in legislation, constitutional or otherwise, but this is what they said, and I was surprised to hear this, "We are distressed," the letter from Marlys Edwardh and Francine Sherkin reads, "at the speed with which this legislation has been introduced and the fact that there has been virtually no consultation with the criminal and family law bars."

I hope that either now or before this goes to third reading there is going to be that consultation and we are going to address it, because here's the concern—I don't know how much time I have left of my five minutes.

The Acting Chair: I'll let you know when you have one minute left.

Mr Bryant: The concern is this: There are always going to be charter and federalist issues that confront any piece of legislation, particularly one that impacts liberty, security of the person, as this does. But in this case we heard and I think there's no doubt that this rings true, that it's going to be the victims themselves who are going to have to bear the burden of basically ensuring that this act is constitutional because it's going to be the victims themselves who are going to be dragged through the courts during the constitutional vetting of it all. At the very least, let's get it to the point where groups such as the Advocates' Society are of the view that we have charter-proofed it as much as possible. One suggestion was made by myself: perhaps we should send this us for a reference in advance so that we aren't in fact having the victims of domestic violence pay for any errors, foreseen or unforeseen, that are found in this bill. By errors, I mean provisions that end up being struck down.

Those are the concerns. I have tabled some amendments which don't attempt to address these concerns but rather try to reflect the changes that were made to give more discretion to the judges in order to assist the victims through the tools that are provided, however minimal, within this legislation.

The Acting Chair: You have one minute left.

Mr Bryant: I'm done.

The Acting Chair: Mr Kormos, and I'll let you know when you have one minute left.

Mr Bryant: I'll give my extra minute to Mr Kormos.

Mr Kormos: Thank you very kindly. First—

Mr Tilson: That's not fair.

Mr Kormos: A lot about life isn't fair, Mr Tilson.

First, let's make it clear that New Democrats again join in any effort to resolve the dilemma that's been demonstrated time after time about the so-called ineffectiveness of restraining orders, of other orders that are

designed to protect victims of domestic violence, be it violence against their person, most serious, or violence against property, or efforts to, for instance, destroy property or dissipate property that could impact on a claimant's right to ever regain control of that property.

It's of some comfort that the legislation appears to be modelled on existing legislation from other jurisdictions. It's also a great concern that not only has there not been an adequate and thorough analysis of the bill in the committee with the assistance of any number of organizations and experts that are prepared to come forward—and if it is a duplication of other jurisdictions' legislation, my same comment would go to them.

It appears to have been rather, with respect, not hastily put together—I can't say that; it might have taken a whole long time—but put together without consideration of the context in the province of Ontario that prevails. Of course, we've talked about the difficulties in terms of, let's say, accessing justices of the peace or other designated judges, the lack of support for persons seeking, especially, emergency intervention orders—they being designed to be available 24 hours a day, seven days a week—when there are already huge stresses on the justice system in terms of JPs and judges.

During the course of submissions by any number of groups I had occasion to comment on concerns about any number of sections in the bill, and I'll raise those just to make sure they're on record as the bill progresses through clause-by-clause. I am disappointed that the government did not see fit by way of amendments to address any of those concerns, and I think that signals a very strong message that the government wants this bill to pass as is.

The bill was going to pass in any event. I don't think there was any major opposition expressed toward the spirit of the bill. But let's understand, this bill very much appears—if it isn't, so be it—to be a response to the murder of Ms Hadley, and the fact that her murderer was released on, as I'm told, three release orders, one by the officer in charge at the station under the Criminal Code and then at least one judicial interim release order, possibly two. The argument then is, "Oh, these release orders are unenforceable. Therefore we'll create a provincial statute that somehow will be more enforceable."

Au contraire. The judicial interim release order under the Criminal Code is one that's enforced by police as well and has criminal and penal consequences. The other point then could be made, "Well, this bill"—and it appears it is because of the amendments to the Family Law Act, among other things—"appears to replace those restraining orders" that are contained in the civil orders by what we lay people call civil judges as compared to criminal judges.

Again, it's acknowledged that oftentimes police are reluctant to enforce an order contained in a judgment from a family court judge, or even a unified family court judge or a superior court judge, that is part of an interim custody and support order. The police are caught between a rock and a hard place. They're uncertain about their

responsibility to do it, and also many police forces are simply stressed in terms of dealing with other things and don't have the resources, or at least feel they don't have the resources, to respond.

I appreciate that this bill may be an effort to accommodate that and to clarify the nature of the order such that the Criminal Code penalty section or offence section that deals with breaching a court order applies more directly, more specifically. Good and fair and well, but my problem is that if the police are having difficulty enforcing judicial interim release orders made by a judicial official, be it a JP or a judge, one way or the other, I don't find anything in this bill that will make it any easier for the police to enforce these orders.

1600

The Acting Chair: You have one minute to wrap it up.

Mr Kormos: Thank you, sir.

It's also strange the way the order goes well beyond orders which would directly protect the security of the victim of domestic violence and move into some of the areas of perhaps broader civil jurisdiction.

The other interesting thing, and I'm going to ask the staff about this when we get to it, is the distinction between an interim order, which can be obtained before a JP or designated judge, as compared to a full-time order, which can be obtained only in front of a Superior Court judge, if I read this correctly—the fact that there is no time limit put on those interim orders. In other words, you've got 30 days within which to appeal, and you go to the same judge or the same level of judge; it doesn't have to be the same judge. But it's strange that there's no time limit on the interim order such that the applicant for the interim order, having gotten it *ex parte*—and if I'm wrong, I want this clarified for me—then has to go and guarantee that there is an order on notice. It may end up being without the respondent defending himself or herself—but that he or she isn't required to go to Superior Court.

So there are problems with it. The problems are not in the spirit or intent; the problems are in some of this very specific drafting. The problems are that it is being imposed on policing communities without giving those policing communities the resources to respond to it; it's imposed on legal communities without giving those communities an opportunity to respond—in other words, beefed-up access to legal aid; and it's being imposed on the judiciary—I appreciate that you folks don't appoint Superior Court judges—which is already incredibly stressed. We've got huge backups, I'm told, in some of the Superior Courts. We've also got huge backups and backlogs by JPs and judges.

The Acting Chair: Thank you very much, Mr Kormos, but I've given you ample time.

Mr Kormos: You've been very generous, very liberal.

The Acting Chair: I've been very fair. Thank you. On the government side, Mr Tilson.

Mr Tilson: This bill is in response to one of the most disturbing and insidious crimes we have today, and that's

domestic violence. It's a crime we can't ignore. In the time that's allotted to me I want to respond to a couple of issues that have been raised during the hearings and in fact today. Before I do that, I want to tell you that I think all members of the committee appreciate those members of the public who have written to us with comments about the bill as well as the members of the public and organizations that have come to us and made presentations a couple of weeks ago.

I'd like to respond to two items. One is with respect to the comment about consultations, which two groups—the Advocates' Society and the Canadian Bar Association I think were two that came forward and indicated that they wanted an opportunity to discuss that with us. There is no question that the government intends to proceed to get into—

Mr Chairman, a point of order: Someone here is taking pictures. Is that in order?

Mr Kormos: A precedent was set, unfortunately.

The Acting Chair: Usually, if there's no flash used—I've seen pictures taken in committee and it has never been ruled against. If it's disruptive—

Mr Tilson: I just draw it to your attention. I find it unusual.

If I could continue, there is no question that many of the details of this legislation will have to be worked out and, as we all know, much of that is done through regulation. I invite members of this committee, opposition members, government members or anyone else, for that matter, if they have suggestions as to how to make this bill work better with respect to the regulations, to correspond with the Attorney General's office and they will take those suggestions under advisement. The Attorney General is certainly open to suggestions from MPPs of all sides.

One of the comments that has been made particularly by members of the opposition portion of the committee is with respect to the Joint Committee on Domestic Violence. It has been submitted that the government really hasn't delivered on that report, which was delivered in the fall of 1999. It proposed a five-year implementation plan. I want an opportunity to briefly respond to some of the comments that have been made by certain members of the committee. Many of these recommendations that have been made—

The Acting Chair: You have one minute to wrap it up.

Mr Tilson: OK—require systemic changes that will involve several ministries. It won't just be the Ministry of the Attorney General. This will require time. In the first year, 70% of the committee's recommendations have been implemented fully or partially or are in progress or will be implemented. The government formed a task group on restraining orders. The task group's recommendations have resulted in the introduction of the Domestic Violence Protection Act, which is this act, which, if passed, would create a new domestic violence intervention order to replace the current family law restraining orders that would be enforceable according to the provisions of the Criminal Code.

The Ministry of the Solicitor General has distributed to all police services a model police response to domestic violence that would provide police with new tools to protect victims, which include guidelines on domestic violence occurrences, bail and violent crime, criminal harassment and preventing and responding to occurrences involving firearms. As part of the model on police response, the Ministry of the Solicitor General developed and distributed a new supplementary police report form which includes a risk indicator tool for front-line police officers. The use of this form will ensure that all critical information about the abuser's background and safety concerns of the victim are included in a standard crown brief prior to a bail hearing. Police services are now implementing the model and must have procedures in place by January 2001.

The Acting Chair: Thank you, Mr Tilson. Your time has expired. Now we shall proceed to the usual clause-by-clause. I think, Mr Bryant, you wish to move a motion under section 1(2).

Mr Bryant: I move that subsection 1(2) of the bill be amended by:

(a) striking out "causes the applicant to fear for his or her safety" in paragraph 3 and substituting "causes the applicant to fear for his or her safety, the safety of a relative of the applicant or the safety of any child"; and

(b) striking out "causes the applicant to fear for his or her safety" in paragraph 6 and substituting "causes the applicant to fear for his or her safety, the safety of a relative of the applicant or the safety of any child."

Is it appropriate to make comments?

The Acting Chair: You certainly may.

Mr Bryant: The point here is just to open it up to include not only the concept of an abuser abusing the spouse, but also we were told during committee that sometimes the abuser gets to the spouse through a family member or a child. That too has to be, in my view, included under the concept of domestic violence. It's just to make sure that we include that other indirect way, you might say, of abusing the spouse, but certainly a direct way of abusing the domestic family.

Mr Kormos: I support the amendment. It would draw people's attention to subsection 2(2) where the government has appeared pretty adamant about keeping the age threshold for an applicant to 16 or over. You see, part of this amendment wouldn't be necessary had the government been prepared to eliminate subsection 2(2). It doesn't deal with the relative issue but it would allow a child to be an applicant without the necessity of including children of the aggrieved or victimized party. As to relatives, take note also of 2(1), where a relative is referred to, but that's only as a respondent, however, or claimant, and that only deals in the case where that relative is the direct party, that is to say the perpetrator of the acts which would justify an order.

I think this is a good amendment which, in view of the failure to eliminate 2(2)—and the government appears adamant that they won't—is essential. Look, I don't want to appear melodramatic, but you've got strange, strange

scenarios going on out there. Harassment of an immediate family member who may or may not be living with the applicant can be used to effectively hold that applicant hostage or force that applicant into doing things that she or he shouldn't be forced to do. So I support the amendment. I think it's a thoughtful one.

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Mr Tilson: This is an amendment to the definition section of domestic violence. The government has difficulty with the amendment because they feel it's unnecessary in that the bill already makes it clear that the acts against relatives or children can cause the applicant to fear for his or her safety.

The words that are submitted in the proposed amendment, we submit, would add little and in fact would make the definition of domestic violence more complex for purposes of interpretation by the courts, so the government has difficulty with this amendment.

Mr Kormos: With respect, Mr Tilson, please. Subsection 1(2) clearly says, "committed against an applicant, an applicant's relative or any child ... that causes the applicant to fear for his or her safety." Now, what does a 14-year-old child of a spouse who's being victimized indirectly through that child, where the only apprehension is to be the safety of that child—do you understand what I'm saying, Chair? It's not the safety of the applicant. In other words, the respondent is hands-off with the applicant, but to exercise coercion the victimizer is causing a child of that person to fear for himself or herself.

The applicant can say, "I know he or she is not going to hurt me, I know that, but they're going after my mother. I know he wouldn't dare touch me or she wouldn't dare touch me, but he's going after my mother" or "she's going after my mother." That's exactly the sort of scenario I think the amendment addresses—and I appreciate what you're saying—but the courts are going to be sitting down, and especially when you have not "includes" but "means" in your subsection 1(2), definition of domestic violence, the courts are going to be called upon by respondents' lawyers to interpret this very restrictively and to the letter of the law because you've worded it in such a way that it's this list, boom, that's it. If it falls even that much outside this list, then it doesn't count. What we're doing is creating, again, gaps, whereas to close those gaps isn't going to cause any hardship.

Who would suggest that if somebody was bona fide threatening or causing fear of harm to a relative where the harm to the relative can't reasonably—you know the defences to threatening charges in the criminal courts. If the accused's lawyer can get the victim to acknowledge that they really weren't fearful, that sure somebody threatened to blow their head off but they're not afraid of that person, no way, then that makes it very difficult for a judge to convict. I'm putting that in a very loosey-goosey way. I hear what you're saying, sir, but the amendment addresses something beyond that.

Mr Bryant: Just very briefly, under the principles of statutory interpretation, clearly this amendment provides

alternatives. You're keeping the cause of the applicant to fear for his or her safety, which is the government's drafting, but you're expanding that to include two alternative examples of domestic violence, in other words, or the safety of a relative of an applicant or the safety of any other child.

It doesn't make it more complicated; it makes it broader. I don't want a court to narrow this to exclude those circumstances. I'd be surprised if the government would want a court to narrow it to exclude those circumstances. This isn't complicating it at all; it is opening it up and attempting to clarify it.

If the official opposition was proposing amendments which would add additional steps, then the point would be well taken. It would be further complicating it, but it's not. These are alternative instances of domestic violence.

Mr Tilson: I can't add anything to Mr Bryant's comments. I think I've stated the government's position.

With respect to Mr Kormos's comments, he gave the example of children. I believe that those situations he described, if I heard him correctly, and I think I did, would be dealt with in other legislation. There's legislation under the Child and Family Services Act that would protect the type of situation that he's described.

Mrs Molinari: My question, I think, may have been answered. It was, where else are these covered in either this legislation or any other? It was more of a technical question, just confirming that the protection of a relative and the safety of a child are covered within other legislation.

The Acting Chair: You're asking the question to?

Mrs Molinari: I'm asking the question to staff.

Ms Anne Marie Predko: In terms of children under the age of 16, they would be covered by the Child and Family Services Act.

In terms of relatives, the relative, if they qualified under this act, could obviously apply on their own behalf if that's what they chose to do. They also have available to them section 810 found under the Criminal Code if that's what the relative chose to do.

Mr Tilson: Paragraph 2(1)5 would probably anticipate the section on a relative.

The Acting Chair: Does that answer your question?

Mrs Molinari: Sort of. That says, "A relative of the respondent who resides with the respondent," so I don't think it really covers what this amendment would cover, because we're not talking about a relative who resides with the respondent. I think this is more open; it's just any other relative. But I understand that it may be covered in other legislation and that the relative can, themselves, file a complaint. I think I'm satisfied that it's covered.

The Acting Chair: OK, thank you. Mr Kormos.

Mr Kormos: Ms McLeod was first.

The Acting Chair: I had you first, but go ahead.

Mrs McLeod: I'm looking now for some clarification, and perhaps you can help me with my memory of the Child and Family Services Act. My recollection is that if there is a risk to the child, the Child and Family Services

Act allows police, or more likely the children's aid society, to move in and to seize the child. The whole purpose of this legislation is, among other purposes, to expand the circumstances in which the risk can be minimized by removing the abuser or potential abuser from the home.

It seems to me that the Child and Family Services Act does exactly the opposite when it comes to children. If I'm correct in my memory of that, if there's no provision in the Child and Family Services Act that allows a potential abuser to be removed before there can be harm to the child, then it would strengthen the case for support for Mr Bryant's amendment. Surely when you've got a child at risk in a home, you don't want to add to that risk to the child by removing the child.

Mr Kormos: (1) Reinforcing the comments regarding the appropriateness of the Child and Family Services Act; and (2) where you make reference to 2(1)5, it's "A relative of the respondent who resides with the respondent." You see, "The following persons may apply for an intervention order ... a relative of the respondent who resides with the respondent." What that is supposed to cover is siblings living together, and I suppose it encompasses elder abuse, but it doesn't deal with what we've been talking about or what it appears the amendment talks about.

First of all, even if the child lives with the applicant—because of course the respondent may not always live with the applicant—there's nothing here where threats against that child—if the applicant has to say, "No, I'm confident that the respondent wouldn't harm me; the history is such. However, the history is also such that I know that respondent uses my child as a way to coerce me, as a way to get me to sign over my paycheque," or what have you. Let's say it's my mother-in-law or my mother living with me, whichever the case may be, not an uncommon scenario—or rather, not living with me, because you wouldn't have a relative living with the respondent, but this respondent terrorizes my mother-in-law. He or she doesn't have the wherewithal to go after me but goes after my weak and vulnerable elderly mother-in-law and uses that to get me to do things I wouldn't normally do: sign over my paycheque, agree to drop the assault charges or what have you. Those are not unrealistic scenarios. Are they the vast majority? Probably not; I hope not. But they are not unreasonable.

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So what's going to happen on an application, not the ex parte interim application but the Superior Court of Justice application, is that the lawyer for the respondent is going to get the applicant to acknowledge: "But you have no fear, do you? You know that so-and-so has never assaulted or threatened you. You are saying he's coerced you by causing your child or your parent to be fearful, but never you." A child can't make the application, because the child is under 16, and if the child is over 16 but isn't living in the home, to wit, living with the respondent—that's what paragraph 5 of subsection 2(1) does: you've got to live with that person if you're merely

a relative. So the child could be 17 years old, or 16, and on their own. A 16- or 17-year-old who doesn't live with the victimizing party has no rights under this bill; it's not designed to cover that.

Ms Predko: I want to clarify that point: A child is defined as any person under the age of 18 years. So any act against any child in subsection 1(2) can be the act or omission that causes the person to fear for their safety.

Mr Kormos: Fair enough. Good for you. I've got to change it, then, to 18 or over, right? You're right; you're covered to the age of 18, because it doesn't require living in the same place. But not living in the same place at the age of 18, you've got the scenario I've described. Very good; you're right. But 18 and over, it doesn't apply. Is that fair?

Mr Tilson: You've also got the words "an applicant's relative." An applicant's relative can be part of that process.

Ms Predko: Your child over the age of 18 years would be your relative for purposes of subsection 1(2).

Mr Kormos: We're getting good now. This has progressed to the point where you're saying for the record—because people litigating this are going to want to read this Hansard—that "committed against ... an applicant's relative" encompasses all the people we're talking about. So a court would be wrong if it said a mother or mother-in-law being threatened with violence or however domestic violence contains this and satisfies what the amendment purports to do?

Ms Predko: I'm not sure I understand the question.

Mr Kormos: You're saying that the amendment proposed is met by the definition contained in subsection 1(2).

Ms Predko: There is a difference between the amendment proposed and what is in place in subsection 1(2).

Mr Kormos: What's the difference? What fails to be caught by 1(2) that is contained in the amendment?

Ms Predko: I can tell you the difference, from my perspective, between those two sections. I don't think I can tell you what fails to be caught. Between those two sections, 1(2) states that for the purposes of this act any of the activity can occur against the applicant, the applicant's child or a relative of the applicant. The amendment takes that further and says the fear that that activity causes can be a fear for the safety of the applicant, the applicant's child or any relative of the applicant.

Mr Kormos: Because subsection (2) includes "applicant, applicant's relative or any child," but it's the applicant who has to have the fear of harm done to them. I'm saying to you that I have been in however many scenarios in courtrooms where I've seen lawyers manoeuvre—and I can anticipate it here—where a lawyer gets an applicant to say, "But, no, I don't fear for myself." The critical test here is that at the end of the day the applicant must still fear for himself or herself, even though the violence was directed against a relative or a child. That's the problem here, and that's what Bryant is speaking to. Again, that's what you're not including. It's

the applicant who has to feel fear. I may feel fear for my child, but the test here is that the applicant has to fear for himself or herself, as I read it. So you miss out on those instances. I'm asking the caucus members to please listen carefully. I don't disbelieve anything you say, but the point you just made is the point.

Mrs McLeod: Before it gets more and more confusing, if I could sort of take it down to the bottom line: As it relates to a child under the age of 18, this act would only apply to provide protection if the applicant feared harm to himself or herself and would not apply if the applicant feared harm to a child. If the applicant fears harm to a child, then the only protection that's available, according to the response of the government earlier, is under the Child and Family Services Act. Have I understood it correctly?

Ms Predko: It's a little more complex than that, because young people of the age of 16 or 17 can be applicants under this act. So it's only in the case of a child under the age of 16.

Mrs McLeod: Let me restrict it to that, then. When we get at fear of risk to a child, let's talk about children under the age of 16. For children under the age of 16, if it's not an actual activity but a fear of harm, then the only protection available is under the Child and Family Services Act. Is that a correct statement?

Ms Predko: There are six components to this definition, and we're talking about two of them. If an assault has occurred against a child, it would be covered by section 1. If an intentional or reckless act which caused bodily harm to a child occurred, it would be covered under section 2. If a child had been forcibly physically confined without lawful authority, it would be covered under section 4. If a child had been sexually assaulted, sexually exploited or sexually molested, it would be covered under 5. Also, under 6, a series of acts—again it could occur to the child if it caused the applicant to fear for their safety.

Mrs McLeod: But fear of harm or threat would not qualify for action under this act, in which case you would have to resort, as the only protection that currently exists for the child under 16, to the Child and Family Services Act.

Ms Predko: Fear of harm to a child under 16 would need to be proceeded under the Child and Family Services Act.

Mrs McLeod: Could I then ask for clarification of whether my recollection of that act is correct, that the only recourse for protection under that act in terms of actual removal of the risk is to remove the child and take the child into custody?

Ms Predko: It's certainly not called "custody" under the act, but yes, it would be an apprehension of the child or another form of intervention in the family; for example, a supervision order or voluntary agreement with the family.

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Mrs McLeod: In which case I really don't think the argument the government has put forward, that children

are sufficiently protected under the Child and Family Services Act and therefore don't need to be covered under the terms of this act, in accordance with Mr Bryant's amendment, really holds.

We're still talking about a court decision about whether or not an individual is at risk. From my perspective it's an important one in that it protects a partner in such a situation. I fail to see why the government would not feel that same protection, as determined by the courts, should be extended to a child in a domestic situation where there is a risk.

The Acting Chair: Any further discussion? If not, Mr Bryant has moved an amendment under subsection 1(2).

Mr Kormos: Recorded vote, please.

Ayes

Bryant, Kormos, McLeod.

Nays

Barrett, Chudleigh, Molinari, Tilson.

The Acting Chair: The amendment is lost.
Shall section 1—

Mr Kormos: We still have debate on section 1.

The Acting Chair: Yes. Go ahead.

Mr Kormos: Very quickly, the committee will know that I expressed concern in subsection 1(2) where the list, 1 through 6, is exhaustive rather than merely demonstrative. I had hoped the instead of saying "means the following acts" it would read "includes the following acts."

It would do basically this: it would permit a court to interpret domestic violence without the restrictions of its having to be only those things in 1 through 6. I'm not saying 1 through 6 aren't in themselves pretty illustrative; what I'm saying is that the courts have to have, in my view, some flexibility around this. Lawyers arguing for respondents are going to suggest—and we'll see what the courts do with that suggestion, and far be it from me to put words in their mouths—"Well, Judge, or Justice or Your Worship, the statute says what it says, and if it doesn't fit squarely into any one of those six things"—appreciating that some of them, paragraphs 1 through 6, are rather broad in their own right—"if I can move it even an inch outside of one of those paragraphs 1 through 6," then too bad, so sad; the applicant is out there without any sort of intervention orders.

I personally, unlike the Attorney General, who wants to criticize courts, most recently—did you hear what he said about the Supreme Court of Canada? He was dissing the Supreme Court of Canada because of their Starr decision, when I doubt that he'd even read it. I read it.

I find it very troubling that the government stands firm on creating that restrictive list and I think it's going to cause grief and it's going to unfairly tie the hands of judges when judges want to be fair, equitable and do the right thing.

Mr Bryant: This is another way, I suppose, to address the amendment that was brought by the official opposition. In other words, if we in the opposition are right here, that that provision is going to be too restrictively interpreted by judges, one way of remedying that would be to have the word "includes" instead of "means." I appreciate the expert opinion provided by counsel on this particular issue. But in case we are wrong, this would be one way of addressing it so that we aren't exhausting the definition of domestic violence in a manner that would violate the spirit of the legislation.

You know better than I do that there are lots of instances, FACS situations, which come before the courts not anticipated yet by committee members or by legislators, that we all, once we heard them, would want included. This would give the courts the discretion to include them in that definition.

The Acting Chair: Thank you. Any further discussion on section 1? If not, shall section 1 carry? Carried.

You're asking people to vote on it, so I'll ask: all those in favour, please indicate. Those opposed?

Mr Kormos: On a point of order, Chair: With respect, I understand what you're saying. I am prepared to concede that when people say "carried" and nobody says "no," that means carried.

The Acting Chair: I prefer the indication so that then there's no debate, in my mind.

Those in favour have indicated. Those opposed?

Section 1 carries.

Section 2: there is no amendment under section 2.

Shall section 2 carry?

Mr Kormos: That's why the Chairs make the big bucks, Mr Beaubien.

The Acting Chair: I'm fair, so if you want to—

Mr Kormos: I know you are.

The committee knows my concern about subsection 2(2), the age restriction. I know the commentary made in response to my concern by staff. I find it troublesome and I predict that we're going to encounter scenarios. You talk about family and children's services having jurisdiction by people under 16. As a matter of practical reality out there, once kids, for instance, who are wards of FACS reach the age of 15 or 15½, FACS for any number of reasons, some better, some worse, says, "You're on your own."

I can anticipate again. The usual one? Of course not. Sometimes seeming bizarre? Of course, but is the prospect of a young woman who is 15½ years old living under the control of, let's say, a pimp an unrealistic one? Sadly, I put to you that it's not. I put to you that there's a scenario. I use "pimp" of course to be perhaps strong in the kind of language. I find it disturbing that a young woman who is 15½ years old who's in a spousal relationship, if you will, with a 17- or 18-year-old male—it's happening out there, for better or worse—or a young woman who is 15¾ years old cannot get an order under this bill.

It's just extremely disturbing, because the reality is that a young woman who is 15 years and 11 months

old—look what we're saying here: a young woman who is 15 years, 11 months and 28 days old, admittedly a child, cannot apply for an intervention order against somebody who may be beating the crap out of her or shooting her up with drugs.

I find that just remarkable, when it would be so easy simply to delete this and resolve that dilemma. This is supposed to be part of a speedy intervention, where you can intervene rapidly and prevent some guy—I use “guy,” or gal, but the fact is that's the usual frequency—some 17- or 18-year-old from going after—again I go back to pimping. You say the court judicial interim release orders. Somebody is busted for pimping a young woman who is 15 years, 11 months and 28 days old may or may not be released under a judicial interim release order. If they are released, the order would undoubtedly say, “Don't have any contact with the young woman.”

Mrs Molinari, please, I think you're sympathetic to what I'm talking about. I'm serious.

Mrs Molinari: I'm listening.

Mr Kormos: The court may impose that order, but that's why this bill is here: we're saying the court orders, the judicial interim release orders, aren't getting the attention they deserve.

I'm saying what we're doing with this age restriction here is preventing the young victim, who is 15 years and 11 months old, of a pimp who's shooting her up and has beaten the crap out of her, from applying on the same 24-hours-a-day, seven-days-a-week basis to get this creep isolated from her under risk or fear of arrest. That's very difficult to swallow. I don't know how you respond to that. Is that the most frequent case? I hope not, but is it a possible case? I'm afraid it is.

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The Acting Chair: Any further discussion under section 2? If not, shall section 2 carry? Those in favour? Those opposed? It carries.

Section 3. Mr Bryant, I think you wish to move an amendment?

Mr Bryant: I move that clause 3(1)(a) of the bill be amended by striking out the word “and” at the end of the clause and substituting the word “or.”

I'm going to call this the Kormos-Bryant amendment. Mr Kormos raised this matter before, during the hearings and otherwise. Right now, to make an intervention order a Superior Court judge has to be satisfied of two things: firstly, that domestic violence has occurred and, secondly, that “a person or property may be at risk of harm.” What I'm suggesting here is that we try to strengthen the section by including the amendment.

Mr Kormos: Call the question.

The Acting Chair: Further discussion?

Mr Ted Chudleigh (Halton): Can we have a five-minute recess?

The Acting Chair: Just a moment. Mr Tilson had his hand up first.

Mr Tilson: I'd like to give some comments of the government.

Interjection.

Mr Kormos: It's too late now. Go ahead.

Mr Tilson: Of course, this section deals with how a court can make a temporary or final intervention order. Taking away the word “and” and replacing it with “or,” we believe, would remove the requirement that domestic violence has occurred. In other words, you don't need to establish that there's been any domestic violence.

Our submission is that the finding of domestic violence is the backbone of the proposed test. This amendment takes that away. Without the requirement that domestic violence has occurred, any risk of harm or damage to a person or property would be sufficient to trigger an intervention order. That's all that would be required; nothing else.

The part that states “a person ... may be at risk of harm or damage” is necessary to distinguish situations where the domestic violence would be so remote from the current circumstances that a judge could not conclude there was any current risk. For those reasons, the government has a lot of difficulty with this proposed amendment.

Mr Kormos: I appreciate Mr Bryant's generosity of spirit when he indicates that we share this concern.

Look, sir, before an order can be made, it has to be found, one, that domestic violence as defined in subsection 1(2) has occurred and, two, “a person or property may be at risk of harm or damage.” Clearly, that implies yet more harm or damage. It doesn't rely on the harm or damage that has occurred to date.

That's why I find your argument confusing, because what you're really trying to say, and I don't want to make your argument for you, is that the—

Mr Tilson: I need help.

Mr Kormos: —first test is that “a person or property may be at risk of harm or damage.” That's really the first test, and that domestic violence has occurred. Your argument would be stronger, quite frankly, if the two paragraphs were reversed in order, because clearly if a person isn't at risk, then whether or not domestic violence has occurred is irrelevant. I appreciate you used the word “may,” which is, I suppose, pretty generous. It's not a tight word, but I find it of concern that an applicant “may” be able to establish that “a person or property may be at risk of harm or damage.”

Let me run this scenario past you. What if I discover on the part of my spouse, my girlfriend, boyfriend, dating relationship, what have you, a letter that says on such and such date—appreciating that paragraph 3, the “threatened act or omission,” somebody may try to cover it. What if I find a letter saying, “I'm going to shoot somebody on such and such date,” you know, somebody who falls within the scope of people. No domestic violence has occurred, unless you can fit it in under paragraph 3 of the definition of domestic violence. I appreciate “act or omission that causes the applicant to fear for his or her safety.”

What if I've got a relationship with somebody who, when they were a bad drunk or a bad drug addict or other kind of drug addict, was beating the crap out of me, they've been on the wagon or straight and narrow for X

number of years but I see them—now again you're going to say that falls under paragraph 3 after "omission." I don't know. That starts to get pretty loosey-goosey.

I'm just concerned about it because I can envision cases—because if you had used "include" instead of "means" in the definition of "domestic violence," then this would be OK, because then the court would have power to expand their definition of domestic violence within the context of the intent of those six paragraphs so that if domestic violence has occurred, they could be a little more flexible and subjective about it. But you haven't. You said "means," so it's got to be one of those six things right within the four corners there of what it says, you know right to the letter of the law and "may be at risk."

I don't know why you don't want to accept this amendment. I think the amendment's an appropriate one. I think it enhances the bill. I think judges are going to find it frustrating and, again, I think lawyers arguing for respondents—this is going to be highlighted for them. They're going to get those highlighters out in their version of this bill and they're going to say, "Oh, this is defence number one, this conjunctive 'and.'"

I wish committee members, other than Ms McLeod, Mr Bryant, myself and Mr Tilson, were joining in the debate and I wish, with respect, that the government members—look, parliamentary assistant, you have a professional background that deals with law; Mr Bryant does; many years ago I went to law school as well. You and I both know that failure to think in a very intense way about these things as we're going through—and some of you folks over there in the government caucus may find this stuff mundane and trivial and that we're being picky. I'm sorry, but we had better be picky now because everybody here has already agreed that the intent of the bill should be given effect to, that the bill in itself serves good purposes.

Quite frankly, this bill has been addressed in a most non-partisan way, in my view, by both opposition caucuses. We're trying to raise issues and this committee process means diddly-squat if government members merely take their marching orders from the parliamentary assistant and wait for him to give the nay or yea to any of the proposals here in any of the discussion. You'll get paid the same, I suppose, but at the end of the day you could make a difference to somebody in understanding that—look, none of the commentary on this amendment has been a rant against the government. During the brief committee hearings on this bill, we're trying very carefully to go through what's been highlighted for us, that has been red-flagged as problem areas. I think the amendment should be supported.

1650

Mr Bryant: I'd just return to the statement by the Attorney General on September 27. The cornerstone, if you like, of this legislation is these intervention orders. He said in his statement to the Legislature, "We propose to replace restraining orders which obviously weren't working, and are not working, with clear and more effective intervention orders." So intervention orders are

really the guts of this bill. They are certainly the part of the bill the Attorney General placed emphasis upon.

So, off we go to court to try to get one of these intervention orders, and all the definitions of domestic violence we just discussed before, which include a threat to the person—and I want to include a threat to the victim's child or relative—are not captured by these intervention orders. In fact, it has to be a super-domestic-violence situation where both domestic violence, which includes threats and, I would hope, indirect violence to the victim has occurred, and a person or property may be at risk of harm. Being at risk of harm is obviously quite a serious test, and it's not going to capture a number of instances of domestic violence. I just say to the committee that including "and" in there makes the test that much tougher.

If the government wants to explain why and make civil libertarian arguments, then fair enough. But if the government wants to say, "Let's take (b) out," because the backbone of the intervention order is that domestic violence occurs, then fine, take (b) out. I'm just concerned—well, there's no concern; I know—that there's a two-part test. Not only must domestic violence occur, but there must be a risk of harm to the person or to property, which obviously makes it that much tougher to get an intervention order from a judge.

I thought the whole point of this exercise and of this legislation was that we would have, in the words of the Attorney General, clearer and more effective intervention orders. I'm trying to make this intervention order more effective, and the government is saying, "No, we're not going to make this intervention order more effective. We're going to make it tougher to get them."

I say the only counter-argument to that is a civil libertarian argument to the effect that we don't want to be giving out intervention orders in circumstances unless there's actual risk of harm to the person. I say domestic violence encompasses so much more than just harm to the person and to property that we should in fact embody that in the intervention orders for the sake of the victims.

Mrs Molinari: I think we're getting into semantics here. If domestic violence has occurred and a person or property is at risk of harm or damage, then a person is at risk of harm or damage. So why not leave it? It's just semantics; it's not going to make a great deal of difference. I would not support the amendment, because I don't think it adds anything.

The Acting Chair: Any further discussion? If not, Mr Bryant has moved under clause 3(1)(a) that the bill be amended by striking out "and" and substituting "or".

Mr Kormos: Recorded vote, please.

The Acting Chair: Recorded vote.

Ayes

Bryant, Kormos, McLeod.

Nays

Barrett, Chudleigh, Molinari, Tilson

The Chair: The amendment is lost.

Mr Bryant, I think you moved another amendment under subsection 3?

Mr Bryant: Yes. I move that subsection 3(2) of the bill be amended by striking out "that the court considers appropriate in the circumstances for the protection of any person or property that may be at risk of harm or damage or for the assistance of the applicant or any child" in the portion before paragraph 1 and substituting "that the court considers appropriate in the circumstances."

Again, the point here is to take out the extra hurdles that need to be obtained by the applicant and give discretion to the judge, who can consider all the evidence and can consider all the circumstances and in fact will not be handcuffed by these extra hurdles added under subsection 3(2) that I move be amended and be substituted, rather. So the court considers all of these considerations and is in no way handcuffed by these considerations, again, for the sake of the victims to ensure that we do get clear and effective intervention orders instead of all these extra hurdles that are thrown in, that are not semantics, that in fact will result in fewer intervention orders being ordered and fewer victims being protected.

Mr Kormos: It's an interesting amendment. I want to ask, if I may, Mr Bryant, because I'm a little concerned about it and I don't want to be doing—just watch. I'm going to be expressing concern about this and the parliamentary assistant is going to say it's a great amendment. Maybe that's the way to get these amendments passed, for me to be critical of them.

The statute as it's written relates back to the purpose of the statute and makes it quite clear that a court isn't, for instance, to be punitive in imposing these orders. In other words, this isn't a criminal court, where they're saying, "You've been a real horrible person, therefore I'm going to do X, Y and Z, and I'm just going to do it because you're a horrid enough person"—and I think that's part of our emotional makeup—"to warrant having this done to you." I'm asking Mr Bryant, if I may, what about the language in the bill that's overly restrictive? My sense is that it's designed to contain the remedies the court invokes so that they serve the purposes of the bill rather than any other purpose. If a court considers it appropriate in the circumstance, I can see a judge—not unreasonably, if they've got a victim—saying, "It may or may not be necessary to do any one of 1 to 13, but just because you're so despicable, I'm going to make you do one or two of them anyway." My question is, doesn't your amendment open the doors to that, as compared to keeping it restricted so that it solely meets the purposes of the bill?

The Acting Chair: Mr Bryant, if you wish to reply, it's up to you.

Mr Bryant: It does open up that possibility, Mr Kormos, but I would suggest that any punitive measure being brought in through the back door of this amendment would not be appropriate in the circumstances and it wouldn't be appropriate for a judge to exercise some

punitive or other discretion. I don't think we should or ought to assume that would happen. My concern is, to answer your question, that in fact fulfilling all of these enumerated purposes may end up restricting and tying the court's hands. I prefer, generally speaking, to provide that kind of discretion to the judge in the absence of any suggestion other than the real concern that this has actually happened.

Mr Kormos: It's time to call the question now, anyway, isn't it?

Mr Bryant: It's time to call the question.

The Acting Chair: Any further comments?

Mr Tilson: I'm going to agree with Mr Kormos, his comments. When you read the section, it directs the decision-maker or the judge to consider all of the various provisions of the sections, 1 through 13, and which of these provisions—and there may be one or there may be more than one—fit the unique circumstances of the particular application that's before the court. As Mr Kormos has indicated, these words in the section make the purpose of the order perfectly clear. They're not punitive orders. They're orders for the protection and assistance of victims. For once I'm going to agree with Mr Kormos. I don't think it's an appropriate amendment.

Mr Chudleigh: Could I call a five-minute recess?

The Acting Chair: You certainly may.

Mr Kormos: On a point of order, Mr Chair: No, he can't, not until the vote has been called.

Mr Chudleigh: I don't think we need the five-minute recess.

The Acting Chair: I think we'll take a five-minute recess, because I need a break too.

The committee recessed from 1701 to 1707.

The Acting Chair: Is there any further discussion with regard to the motion under subsection 3(2) on page 3 in front of you? Have you requested a recorded vote?

Mr Tilson: Which amendment?

The Acting Chair: This is the amendment on page 3.

Mr Bryant: The Tilson-Kormos amendment?

The Acting Chair: Yes. All those in favour of the amendment? Opposed? The amendment is lost.

Mr Bryant, on page 4 you have an amendment under subsection 3(2).

Mr Bryant: Yes. If the previous one was the Kormos amendment, I'm going to call this the Charleton Heston amendment.

I move that paragraph 7 of subsection 3(2) of the bill be struck out and the following substituted:

"7. Requiring a peace officer to seize any weapons and any documents that authorize the respondent to own, possess or control a weapon."

I was surprised when we saw this provision because, the way it is now drafted, the only weapon that could be confiscated would be one that was used or threatened to be used to commit domestic violence. I don't think that abusers should have weapons or the documents that authorize them to own, possess or control a weapon in a domestic violence situation. Talk about after-the-fact, ineffective responses to the threat of violence. I would

think this is a serious matter, the question of an abuser or, under the test, a potential abuser where there's a risk of harm. Should that person have weapons? No. I think that under this provision the court should be able to order that the police confiscate the weapon from such a person immediately, not just a weapon that has already been used against the victim.

Mr Kormos: I think this is a very carefully worded amendment. The author has said "any weapons" as compared to "all weapons." So there is still discretion on the part of the judge conducting the hearing. "Any" implies such weapons as may be in the possession of. It doesn't say "all weapons" willy-nilly. Surely that's what Mr Bryant intended. It addresses the real flaw in the equally carefully worded provisions of paragraph 7.

Let's look at some real case scenarios. Let's face it, with most spouses who get shot dead or shot and wounded, it's not as if they've been shot three or four times already. Usually our experience, our knowledge of this indicates that—you've got in this case a spouse, but any of the people you talk about; it could be victims of domestic violence who have had the crap kicked out of them, who have been abused in any other way—more often than not it's the last time there is an assault on that victim because the weapon kills them dead, to wit, a gun or rifle. It could be a perfectly legitimate rifle, in other words legally owned and possessed. So it's just very straightforward.

If you want some reference, you people have the material before you, but as I recall the Criminal Code provisions, upon a conviction for assaults, at least assaults of certain types, not necessarily assaults with a weapon, there is a requirement that a judge order a weapons ban on that person. That seems to be a not unreasonable proposition. In other words, if you demonstrate a violent propensity, what the hell do we want people who demonstrate a violent propensity within their home to have weapons for? To make it easier, so that with one pull of the trigger they can blow away their partner, compared to saying, "We'll wait until you point that gun at your spouse, in anger or in whatever crazed state you've got to be, and then we'll give the judge the power to consider pulling that weapon from you?"

Don't forget, it applies to the interim orders too. This is where there's an intervention order with notice to the other party. So it's not as if you're not giving the other party a chance to make their case, to make their argument. I think it's even more critical when we get to section 4, the interim orders. Here again you're tying the judge's hands. You're saying, "Judge, you can have an application before you with notice," so the respondent has every chance to call witnesses, to cross-examine the applicant, to do all that stuff, and he or she can have an arsenal in their possession. Yet, unless one of those guns was used to threaten, or used, that's the only circumstance under which a judge can pull the gun or guns.

The amendment says "any," as compared to "all," which I suspect might be given the interpretation that a judge could say, "OK, you can still keep your Jim Bowie

knife if you're so inclined." I'm not sure whether that would be reasonable, but the judge can distinguish, because we're talking about weapons as defined in the Criminal Code.

Again I say to the government members that this is an eminently sensible amendment. I'll tell you right now there are going to be judges sitting there, champing at the bit. Many of them will reflect to themselves but more than a few will comment out loud, "What in God's name is the provincial Legislature doing when they prevent me from ordering forfeiture of guns, for example, from a guy whose violence has been escalating to the point where he's putting the boots to his spouse?"

What are we talking about? If we have been at all serious—all of us have sat in that Legislature and reflected with incredible regret and sorrow on the casualties among women, in this province and nationally, yet what is an incredibly fair proposition is not going to be accepted by this committee. This is the last chance. If this bill isn't amended now, when it goes to the Legislature for third reading, that's as good as it gets.

I would do this: I would be prepared to suggest that we move on with other clauses in the bill and defer this amendment, because the government may be concerned about some of the precise language here. Fair enough. I would be prepared to defer consideration of sections 3 and 4, as far as the interim, and move on with the rest of the bill, where I doubt we're going to have any real stumbling blocks. I'll be prepared—and I'm confident others will join me in this—to come back here for five minutes at any time or point, whenever you want, to readdress this and then pass the bill and get it into the House for third reading.

This is going to haunt this committee. When you've got somebody who has demonstrated violence, what is the public going to say when the bill is being touted, not unreasonably, as a whole new mechanism whereby people can protect themselves, purportedly with more effective restraining orders, or orders, and the judge wasn't given the power to pull weapons out of a violent person's hands? What is the public going to say? The public will be as outraged as they've been over however many years, and even in the recent past, in terms of the incredible lapses in the criminal justice system, for example.

I ask the parliamentary assistant, in all sincerity, and I ask government members, to consider not dealing with sections 3 and 4 here and now and moving on with the rest of the bill. I don't anticipate any similar major or radical concerns. So far, you know where I've been on the amendments and I know where you've been. To be fair, there's an argument to be made for your position and there's an argument to be made for the opposition's position.

At the end of the day, we're dealing with things that cause us concern, but this one glares. This one just stands out so dramatically. It might have been something that was duplicated from another jurisdiction's legislation, but I can't believe that it's nothing more than an oversight. I can't believe that the legislative or bureaucratic staff who

wrote this actually intended that scenario, especially when you make that reference to the Criminal Code, where a mere conviction for assault can result in a ban against weapons even if no weapon was used in the assault. Am I correct in that interpretation of the code? I don't have the Criminal Code with me. There seems to be a logic to that, and we applaud judges who take that step, but we're denying a judge—and I'll argue the same case even more dramatically for the interim hearings under section 4, where the person has a chance within 30 days to go back and say, "No, no, taking my guns or my other weapons was certainly not warranted," and it can be reviewed.

This seems to be a very serious matter, and I dread—again, witness Ms Hadley, when everybody in this province and in this country went through the what-ifs. What if the sergeant or the officer in charge hadn't released him the first time? What if the justice of the peace at the bail hearing had more time or more evidence so as to hold him in custody the second time? That person might still be alive.

1720

Mr Tilson: I can't agree with what Mr Kormos has just stated. If one reads clause 7, it asks the decision-maker or judge to do two things: which weapons were used or threatened to be used and, if appropriate, order their removal. That's what this clause says. The amendment goes much further than that and, I believe, is overly broad.

I can think of situations, for example, in rural communities. I look at the three opposition members and I don't think they come from rural communities.

Interjection.

Mr Tilson: Mr Kormos says he does. He comes from everywhere. But I can tell you that there are situations where the amendment that's been suggested by Mr Bryant wouldn't be applicable because it simply would not happen. We're saying that the amendment, as suggested, is overly broad.

The Acting Chair: Mr Kormos, in order to refer sections 3 and 4, I need unanimous consent to do that.

Mr Kormos: Quite right. I'll remove that from the table—

The Acting Chair: But you have the floor. You're next to speak.

Mr Kormos: I understand that.

I say to Mr Tilson that the riding of Niagara Centre contains a lot of farmland and agricultural land in terms of livestock, poultry, fruit farming and other crop farming. Huge chunks of where I come from down in the Niagara region are rural, and I'm intimate with rural life, not just in Niagara but in other parts of the province as well.

With your indulgence, Chair, I want to ask the staff, in terms of how clause 7 reads—because this is how I'm reading it, and I infer that this is how other opposition members are reading it.

Mr Bryant: That's not how we described it. That's how Mr Tilson described it.

Mr Kormos: Well, I'm not sure. It says that before you can require a police officer to seize a weapon, that weapon either has to be used to commit domestic violence—in other words, I have to point that gun at my victim or shoot at my victim—or I have to say, "I'm going to get my gun and shoot you and blow your head off." If I haven't done either of those two things, if I haven't actually used it to shoot you—bang, you're shot—or pointed it at you, which I agree is probably using it and it's an offence under the code, or if I haven't said, "I'm going to get my gun and I'm going to get you," or "Next time I'm going to use the gun on you," then the test for paragraph 7 hasn't been met. Is that accurate?

Ms Predko: That's correct. I would also like to point out that the definition of "weapon" goes beyond firearms.

Mr Kormos: Quite right. Knives, prohibited weapons, cudgels—

Ms Predko: Anything that can be used for the purpose of injuring.

Mr Kormos: Yes, a broken beer bottle—I remember that case.

I'm glad we've got the clarification, because that's exactly the point. With all due respect to the many farmers I know and represent, I don't give a tinker's damn if it's a farmer who is going to use his gun to shoot his wife or spouse—I should be more gender-neutral, but the fact is it's usually women who get the beatings. I don't give a tinker's damn whether it's a farmer or a person who needs the gun for his or her occupation or profession—and there are professions in our province that require that—if you've got somebody who is demonstrating violence to the point where they fall within these definitions of domestic violence, I want a judge hearing the matter to have the power. It's not mandatory; all these things are discretionary, huh?

Ms Predko: That's correct.

Mr Kormos: It doesn't compel the judge to do it; it says it's within the judge's power. But this severely restricts his power. Similarly, the Bryant amendment would merely put it within the judge's power.

Mr Bryant: Charlton Heston.

Mr Kormos: OK. It would merely put it within the range of things the judge considers. We're handcuffing the judge. We're saying that even if that judge—somebody who is terribly biased—wanted to say, "I'm sorry, you haven't quite reached the point where you've pointed your gun or shot your spouse yet," or "You haven't quite reached the point where you threaten to go and get the gun. That means I can't take away the gun or the other weapon." I think I know how the Criminal Code defines weapons. But most dramatically here, the fact is you don't need a document to possess a machete. Clearly, the conjunction of that document part implies that the real focus here is guns. It implies that because it talks about seizing the documents that allow you to have one.

I hear what you're saying. I say again to the parliamentary assistant—

Mr Tilson: How far would you go, though? The definition of "weapon" in the Criminal Code is pretty

broad. You could go into a kitchen and find all kinds of weapons. Do you clean out the kitchen?

Mr Kormos: No, but you know that a kitchen knife or a steak knife is not *prima facie* a weapon. It's only a weapon once it becomes intended to be used as a weapon, whereas a firearm—

Mr Tilson: It's a definition of "weapon."

Mr Kormos: —is a weapon *prima facie*.

Mr Tilson: That isn't what the section refers to.

The Acting Chair: Mr Tilson, one person at a time.

Mr Tilson: Sorry, Mr Chair.

Mr Kormos: I hear you, but I want the judge to have the discretion. I don't want that judge, him or her, to only be able to order seizure of a weapon, and that's why the phrase "any weapons," in my view, lets the judge cherry-pick, if you will. It lets the judge decide: not "all weapons" or "all potential weapons" but very specifically. Again, I'm not talking about the farmer with a .22, although a .22 owned by a farmer can be lethal if it's used in an improper way. I know households where there are arsenals of perfectly legal weapons. I'm not talking about guys with illegal guns.

Why are we approaching this from the point of view that somehow—I think part of this misunderstands domestic violence. Domestic violence is committed by doctors, lawyers, architects and politicians: people who are otherwise seen by the public as very law-abiding. Preachers—I don't want to miss any profession or occupation—the whole nine yards. You don't have a stereotype of who can commit domestic violence. Domestic violence can be committed by people who don't own firearms or other obvious weapons, as well as by people who do.

I'm not suggesting that people who acquire firearms acquire them for the purpose of shooting their spouse. But the reality is that when a firearm is there it becomes, in the incredibly volatile context of a domestic beating of someone—again, however perverse the sad, almost pathological expressions of anger that are inherent in domestic abuse, anger at any number of things other than the victim.

I'm going to cede the floor to others who may wish to make comments, but once again I want to raise referring sections 3 and 4, because I think this warrants the government looking at this. If you don't like Bryant's amendment, if you think it doesn't quite hit it on the head and you want to change it and come back with, "Requiring a peace officer to seize any weapon as specified," to make it clearer that you're not talking omnibus "every weapon"—but give the judge that power.

It becomes, quite frankly, even more critical on an *ex parte*, where a judge or JP is making only an *ex parte* which can be intervened within 30 days by the respondent. But where the judge or JP doesn't have all the facts, I want people to err on the side of caution. I want JPs, judges, Superior Court judges to be able to err on the side of caution, because if the goal here is to save lives and protect victims of violence from more violence or escalated violence, we've got to err on the side of

caution. I'm prepared to let a judge use that discretion, if only we gave it to them. The bill doesn't give it to them, and I appreciate the staff's confirmation of what I understand the bill to say.

1730

Mrs McLeod: I must admit I'm completely confounded by the government's opposition to this amendment, and I particularly don't understand why the application of any law dealing with domestic violence isn't as applicable in any rural setting as it is in any urban setting.

Mr Tilson asks how far we would go. This isn't a question of us going anywhere, it's a question of discretion, as Mr Kormos and Mr Bryant have both said, discretion being given to the judge in cases of court-determined violence or risk of violence to be able to take the actions that the court, the judge, feel are necessary. I don't understand why the government would feel that it needs to in any way limit the discretion of the court. Mr Tilson is quite right: the Criminal Code clearly has a broad definition of a weapon. It's there in order to give the court some discretion in dealing with the potential for a weapon to be used for intimidation or for actual abuse. I think we have to come back to the fact that this is about court-determined domestic violence.

Not dealing with this particular amendment, but part of this bill allows threat or intimidation to be termed "domestic violence" and to become grounds for removing an abuser, someone who commits this act of domestic violence to be removed from the home. When I proposed something similar as part of a platform in 1995, Mr Tilson I'm sure will remember there was a big headline that said, "Yell at Your Spouse, Lose Your House." That was never what was involved. It was always court-determined abuse that was at issue. The same thing is true here. This is not a subjective judgment; this is not some kind of surreptitious way of getting at expanded gun control. This is action allowed to the courts where there is court-determined domestic violence, an act of domestic violence, as defined by the government's own bill. I'm pleased to see this bill here. I think it should be used to the greatest extent possible to do exactly what the government's intent is in bringing it forward.

I guess I just want to come back, finally, to what this is all about and why it matters so much. When the bill was being debated, the New Democrats provided us in the Legislature with a list of some 43 women who have been murdered in domestic situations since the May-Iles recommendations were made. These are women whose names are known and are a matter of the public record and in most cases where we know the cause of death. More than half of those women were murdered with the use of either a knife or a gun. That's really what this is about. It shouldn't have to reach the point where somebody has been murdered with a gun or a knife before the court is allowed to take action that the court believes is appropriate.

Mr Bryant: If the government were serious about their concerns about this section being over-broad, I

would encourage the government to—well, they've had this amendment since November 9, so it's not as if this is a surprise to them. But if they do have a concern as to over-breadth, then I would welcome any suggestions so that we can make this as tough as possible with respect to firearms and then I guess close off any preposterous hypotheticals with respect to steak knives. I would submit, with all due respect to the parliamentary assistant, that that was hardly a bona fide argument. The absurd should not govern the way we judge a particular provision or amendment, and that is an absurd, if you like—logical but nonetheless absurd—deduction to be drawn from the idea that a judge would seize any weapon.

If you want to circumscribe it to firearms and then address it to weapons, fine, but as it reads right now the gist of this provision is, if the abuser missed when he first shot at her, then we'll confiscate the weapon, but if he doesn't miss it's going to be too late. Surely even the government would agree that gun control as applied to abusers, whether they be in a rural or an urban setting or a suburban setting, ought to be exercised. This is the worst-case scenario. I would have thought that the government would have been open to at least considering or refining an amendment, because as it stands right now the section is practically worthless and would not have prevented any of the deaths that were the subject of the Attorney General's ministerial statement to the Legislature.

I would just say that if the members are concerned about the time we have left, if you want to discuss this further, my amendment to subsection 4(1), while I still think it's worthy, to some extent is going to be swallowed up by previous arguments made. So I think this section is worth dwelling upon. If the government is serious about the statement Mr Tilson made at the beginning of his comments—in his opening five minutes he said, "We're open to amendments"—I would say you haven't been open to amendments yet. This one is clearly going to make a difference in people's lives and their safety. I urge committee members, no matter what constituency you represent, to reconsider this, because you don't want this to come back and haunt us.

Mr Tilson: I just want to repeat again what I said at the outset in response to Mr Bryant, that this amendment is overly broad, and the reference to weapons, it does cover—I get the impression that both Mr Bryant and Mr Kormos are referring to firearms—

Mr Bryant: No. Machetes, weapons, anything that may cause harm.

Mr Tilson: In other words, you acknowledge that—I won't read the definition in the Criminal Code, but it talks about any thing; it could be a thing, anything.

Mr Bryant: If a judge wants to confiscate that thing, in his judgment, then yes.

Mr Tilson: Absolutely. Return to the section as to what it says. It refers to "where the weapons have been used or have been threatened to be used." That goes pretty far. If the applicant comes forward and says that the person involved, a man or woman—and I agree it's

probably going to be a man, but it may not necessarily be—"has threatened me with this particular thing," whether it be a stick or a gun or a knife or anything, the judge or the decision-maker has the jurisdiction to invoke paragraph 7. That's pretty good protection to that person if they come forward with that evidence, as opposed to your section, which says anything, anything in the house, for example, which could be defined as a weapon, if I read your amendment; it could be anything.

I'm not trying to say, to use your word, that your suggestion is absurd. I believe you generally believe what you're saying, but I will only repeat what I said at the outset, that the amendment is overly broad in its application, and we cannot support it.

Mr Kormos: Mr Chair, I ask that this section be stood down so that the government can consider its position and perhaps draft an amendment which meets the spirit of the amendment on the floor that is more in line with its request for less broadness.

The Acting Chair: So your request is to stand down section 3?

Mr Kormos: Yes, sir.

The Acting Chair: I need unanimous consent. All those in favour? I have no unanimous consent. Any further discussion?

Mrs McLeod: Again I am confounded by the concern of the parliamentary assistant in terms of breadth. We're not talking about some kind of wholesale search and seizure of every kitchen knife in the province of Ontario. We're talking about a judge's discretion to take a weapon away from somebody who has committed an act of violence as defined by the government's own bill. I just don't see where the breadth is involved here that the parliamentary assistant is so concerned about. I really regret that there is no openness to at least consider this.

1740

Mr Tilson: Just to respond to that, that's exactly what the section says. If it's been used or threatened to be used, section 7 applies.

Mrs McLeod: That intervention order cannot apply unless the court has found that this individual has committed an act of domestic violence, according to your bill. It's not a wholesale search and seizure. It is somebody who has committed a violent act. Let's not forget that's who we're dealing with here.

Mr Bryant: If the concerns about over-breadth are directed at the kitchen knife scenario, then I will amend my amendment to say "dangerous weapons" or I will amend my amendment to say "firearms," but I suspect that that still isn't going to be good enough for the government.

Mr Chair, I seek to amend my amendment to take out the word "weapons" and therefore deal with the issue of over-breadth, and insert the word "firearms." If the government doesn't like amending on the fly, fair enough. Let us stand this down and try to come up with an amendment that deals with the issue of over-breadth.

The Acting Chair: You're proposing an amendment to your amendment?

Mr Bryant: That's right.

The Acting Chair: So you're proposing "Requiring a peace officer to seize any firearms and any documents that authorize the respondent to own, possess or control a weapon"?

Mr Bryant: "A firearm."

The Acting Chair: OK, "a firearm."

You've heard the motion by Mr Bryant to amend his amendment.

All those in favour of that amendment? Opposed? The amendment is defeated.

So the original amendment is still on the floor. Mr Kormos, I think you have the floor.

Mr Kormos: At the onset, I had assured Mr Tilson, with reasonable anticipation of accuracy, that we'd be able to get through this bill this afternoon. Look, there have been times when I've been obstructive and I think the phrase is "dilatatory" with certain goals. I'm telling you, though, I am again incredibly concerned about what is happening in terms of the stonewalling on the propositions regarding some critical pieces of the legislation. Both opposition caucuses have already requested that the section be stood down to let the government, if it doesn't like the amendment proposed, draft its own amendment.

I've never been a big fan of committees because they end up too often—not always, but too often—meaning so little. But this is the one chance where members of the Legislature can have some real direct power and some real meaningfulness in terms of what they do here. I understand—believe it or not, I was in a government

caucus once too—that the government caucus and its members try not to contradict what appears to be the government's intention or the government policy. I never felt constrained by those sorts of things, but clearly most government members, whatever government it is, do.

We've stumbled across a serious shortcoming in the legislation. I don't even think it ever accurately reflected any distinct-policy decision. I'm not convinced there was ever a political/policy decision made to do what this paragraph 7 in fact does. I believe that one of two things happened: either it was just picked willy-nilly, cut and pasted from legislation from another jurisdiction without there being adequate consideration of the impact of it, or the wording was put together and, again, it got overlooked.

I think this is a very frightening paragraph because of the way it handcuffs. Again, in the whole context of law and order, you don't get to the stage of this hearing—in fact, you don't get to the point of a judge deciding which of these, what is it, 13 things he or she is going to impose—

The Acting Chair: Mr Kormos, I will have to adjourn the meeting because the bell is ringing. We do have a vote. However, if I can have unanimous consent, we can come back after the vote. It's up to the committee.

Mr Kormos: The committee only sits until 6.

The Acting Chair: It's up to the committee. If I get unanimous consent, we can come back after 6. No? OK. We will now adjourn.

The committee adjourned at 1746.

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First Session, 37th Parliament

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Official Report of Debates (Hansard)

Thursday 16 November 2000

Journal des débats (Hansard)

Jeudi 16 novembre 2000

Standing committee on justice and social policy

Labour Relations Amendment Act
(Construction Industry), 2000

Comité permanent de la justice et des affaires sociales

Loi de 2000 modifiant
la Loi sur les relations
de travail (industrie
de la construction)



Chair: Marilyn Mushinski
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Thursday 16 November 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Jeudi 16 novembre 2000

*The committee met at 1540 in room 151.*LABOUR RELATIONS AMENDMENT ACT
(CONSTRUCTION INDUSTRY), 2000LOI DE 2000 MODIFIANT
LA LOI SUR LES RELATIONS
DE TRAVAIL (INDUSTRIE
DE LA CONSTRUCTION)

Consideration of Bill 69, An Act to amend the Labour Relations Act, 1995 in relation to the construction industry / Projet de loi 69, Loi modifiant la Loi de 1995 sur les relations de travail en ce qui a trait à l'industrie de la construction.

The Chair (Ms Marilyn Mushinski): I call the meeting to order. Good afternoon, ladies and gentlemen. This is a meeting of the standing committee on justice and social policy to consider Bill 69, An Act to amend the Labour Relations Act, 1995 in relation to the construction industry.

Mr David Christopherson (Hamilton West): On a point of order, Madam Chair: I seek your guidance as to where this would be appropriate, but I want to raise the fact that I wish to put before you an argument that the proposed amendment tabled by the minister yesterday is a major departure from the original bill. Notwithstanding that the Speaker ruled, the Speaker did acknowledge that he hadn't yet seen the regulation, so I will argue that still allows this to be considered by yourself and the Speaker. In light of those arguments, I'm going to suggest to you that the amendment is out of order and I seek your guidance as to when you would like me to make that case.

The Chair: What I would like to do is to hear from all members of the committee as to their opinions on whether they feel it's in order and then we'll discuss whether we debate it.

Mr Christopherson: I didn't make the argument yet. I was seeking your guidance as to when I would be able to make that argument.

The Chair: OK, you're allowed to make it now, Mr Christopherson, bearing in mind, if I may, that at 4:30 we automatically go into clause-by-clause consideration of the bill with no further debate.

Mr Christopherson: Let me just say that if you're suggesting that somehow my taking up some time may damage the sensitive balance of democracy that the

government has placed before us, I don't think that's anything we need to worry about.

The Chair: It really doesn't have anything to do with that. The order of the day, and I should read this into the record, Mr Christopherson, says:

"That, pursuant to standing order 75(c) the chair of the standing committee on justice and social policy shall establish a deadline for filing of amendments with the clerk of the committee; and

"That the standing committee on justice and social policy shall be authorized to meet November 16, 2000, for clause-by-clause consideration of the bill; and

"That the committee be authorized to meet beyond its normal hour of adjournment on that day until completion of clause-by-clause consideration; and

"That, at 4:30 p.m. on the day designated for clause-by-clause consideration of the bill, those amendments which have not been moved shall be deemed to have been moved, and the chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill, and any amendments thereto. Any division required shall be deferred until all remaining questions have been put and taken in succession with one 20-minute waiting period allowed pursuant to standing order 127(a)."

I understand that's enough for the record, Mr Christopherson, so please proceed. You have, as I say, until 4:30.

Mr Christopherson: I appreciate your reading that.

All of that is just a nice legal way of saying that at 4:30 the workers' rights are screwed because all debate ends and the government's going to ram this amendment through. I understand that. Nonetheless, I want to make what I think is a very legitimate and serious submission. We'll read into the record in part an opinion forwarded to you by Koskie Minsky. I believe that you may have a copy of that; certainly it's addressed to you.

Let me begin by saying that I know the Speaker has ruled on this once, but if you look at the Speaker's ruling, in part he said that without actually having the amendment in front of him and knowing the extent of the amendment, he couldn't possibly rule on whether or not that was out of order vis-à-vis the original intent of Bill 69. So number one, I would argue that making this argument is in order, and secondly, I want to suggest to you that—

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): On a point of order, Madam Chair: I'm just wondering if we should have a copy of that legal opinion if he's going to be referring to it in any substantial way.

The Chair: Yes, actually that opinion has been placed before me and we'll get a copy distributed to everyone.

Mr Christopherson: I would suggest to you, Chair, that the arguments contained in the legal opinion should be enough to sway you and the Speaker to rule this out of order. The original Bill 69 was very limited in terms of the authority it granted to the minister. It detailed a very specific process that had to be followed before the minister could exercise the power that Bill 69, as presented to the House the first time, had indicated, that being that there had to be relevant employee bargaining agencies that had initiated such action and that they voluntarily provided written proof of the desire of the majority of the agencies to effect a change in status. That's a very detailed, very specific and very limited procedure to be followed.

I would suggest to you, with respect, that now moving to an amendment such as we have before us, which gives broad sweeping powers to the minister, not just to the affected eight general contractors that have been the focus of this discussion—but there's no geographical containment and no reference to how the unions may or may not feel about this as a suggestion, and this power, over the course of one year, notwithstanding the minister's "Trust me, trust me" statement in the House, nonetheless gives the Minister of Labour the absolute, sweeping powers to wipe out the bargaining rights of every construction worker in the province of Ontario over the course of one year.

The minister is claiming that's not his intent. He went so far as to say that we could take him at his word, that if it wasn't exactly what he said, then we could hold him accountable. That may or may not be. He may or may not be the minister the day the regulation is proclaimed. That is not the crux of my argument, nor should his assurances be a part of this argument.

The fact of the matter is that originally there were very specific steps that had to be followed; there was strictly limited access to the power the minister ultimately would have, in the original bill. Now we have an amendment that, if passed, would create a bill that gives the minister, with the stroke of a pen, in a regulation, the ability to eliminate the collective bargaining rights of any worker in the construction industry across the province over the course of one year. That is a substantive departure from the very limited, strict interpretation that was provided in the original Bill 69 as reported from committee to the House.

I quote from the legal interpretation that has been presented to you, Chair, and I put on the record:

"There is no apparent legislative restriction on the exercise or scope of this power. It does not have to be 'triggered' by any agreement of the union(s) involved. It makes no reference to whether there are still employees working in the bargaining unit at the time that the order is made, or the majority wishes of either their bargaining

agents or the employees themselves. Indeed, from our review of the amendment, it has the potential for tremendous abuse if certain employers took advantage of the amendment and effectively lobbied to have their collective agreements extinguished.

"Finally, the proposed amendments appear to be inconsistent with the prevailing principles of the Labour Relations Act, 1995. In our opinion, the unrestricted power to extinguish bargaining rights by regulation is at odds with the stated principles of the act to 'facilitate collective bargaining between employers and trade unions that are the freely designated representatives of the employees,' to 'promote ... employee involvement in the workplace' and 'to encourage co-operative participation of employers and trade unions in resolving workplace issues.'

"In summary, it is our opinion that the proposed amendment to Bill 69 constitutes a substantial change to the bill."

1550

I would also put on the record that they say:

"In our opinion, such far-reaching power to extinguish bargaining rights by regulation is unprecedented in labour relations regulation in this province. Given the magnitude of this power, we must assume that it most certainly would have been the subject of intense scrutiny and debate if it had been included in the original version of Bill 69. We understand that the Minister of Labour has made reference to his intended purpose of this amendment as an enabling function. We understand that the minister's stated objective was apparently to allow eight general contractors to be relieved of non-civil trades obligations outside of board area 8, flowing from the Toronto building trades working agreement."

Again, it's fine for the minister to give those assurances. There's a world of difference between the accountability that we can hold a minister to, in terms of what he says in the House versus the ability of a minister with the kind of sweeping powers that this amendment would give them under Bill 69.

I suspect that the minister knows that this is likely challengeable under the charter, first of all, but before we get to that point I want to urge you to recognize that this amendment is a major departure from the original intent of Bill 69. It gives sweeping powers to the Minister of Labour beyond anything we've ever seen before and certainly beyond anything envisioned in Bill 69, even after it was amended, much to the surprise of the labour leaders who were in the room at the time.

So, Chair, I am asking you and urging you to recognize the strength of this argument and rule that this amendment is indeed out of order and has no place before the business of this committee.

The Chair: Thank you, Mr Christopherson. Minister Stockwell.

Hon Chris Stockwell (Minister of Labour): If my friend wants to go ahead, that's fine by me.

Mr Dominic Agostino (Hamilton East): Thank you. Just to add briefly to what my colleague from Hamilton

West has said, I fully agree that this amendment is one based on, "Trust me, I'll do the right thing." Even if we take that literally and even if we give the benefit of the doubt to the minister and say, "That's fine," the reality is that it has absolutely no other binding jurisdiction beyond simply the minister saying, "Trust me, I'm not going to go too far with these powers you have given me."

The reality is that Mike Harris may decide in a month to shuffle the cabinet and move Mr Stockwell to the finance ministry or something and then you'd have a situation where you have a new minister there, where there'd be, first of all, absolutely nothing binding whatsoever to the commitment made by the current minister. It's not even binding on the current minister, frankly, not even on you, Minister.

So the way it is worded is so wide open. First of all, let me tell you that Bill 69 itself is bad and shouldn't be here. That being said, what you're trying now through the wording of this amendment, which I believe is substantially different than the bill—and I think the legislation and rules that we work with around here are clear, that amendments cannot be substantially different or change the intent of the legislation it has been added to. Clearly this changes or has the power to change the intent of the legislation. It can go way beyond the intended scope of the minister and there's no legal authority within this piece of legislation, within this amendment, to restrict the minister from carrying out full broad powers and scope. No one has yet said, "Yes, it is." I'd be interested if the minister can point out in here where it limits his powers, beyond simply saying, "Trust me, I'll do the right thing and I won't go beyond that."

It's not good enough, it's not binding, it means absolutely nothing. We're in the Legislature with a bill, and frankly this has taken what was one aspect of a piece of legislation that we were debating in the House and totally opened it up now to include what I would suggest is going to be a totally different intent and meaning to it. I don't believe this amendment belongs here, Madam Chair. I believe it should be ruled out of order. I think the fancy changes, the bill we're debating—I think the government would have to bring in another piece of legislation with that bill itself if that was its intent. I just find it hard to understand why, in the amendment, the minister would not have limited the scope of his powers to the agreement that had been made or the discussions that had been held if that was truly his intent and the intent of the government. I don't think we should leave it to chance. I think it is totally inappropriate to be here, and I would ask you, Madam Chair, to rule that way.

Hon Mr Stockwell: I listened very carefully to the arguments made by Mr Agostino and Mr Christopherson. They appear to be based on political decision-making and political issues. They may be good debating points. I'm not really sure where it is they've determined that the bill, or the amendment, is out of order. The only thing I could get out of Mr Steinberg's letter, from Koskie Minsky, is that he suggested the rights were deemed. Both of them are deemed, in both amendments. They're both very similar in that respect.

Furthermore, for an amendment to be out of order, Madam Chair, an amendment must not have been dealt with in the original part of the bill—that there was no discussion, no talk, no change in the original form. But there was. The fact remains that an amendment therefore can be in order if you are simply amending a portion of an act that you were dealing with in the first place.

You may argue that it goes a long way or it's more extreme etc. That may be a good political debate, but it doesn't make the amendment out of order. The amendment is universally in order as long as you deal within the framework of that legislation, which is what we're doing, which is part of this bill. It deems, through the Lieutenant Governor in Council, the power to deem bargaining rights in the reg-making powers, and both of them deemed that as well. The fact is that although these may be good arguments for debate in the House, or maybe even good questions, I didn't really hear any tangible evidence why the amendment would be out of order.

The Chair: Any further speakers?

Mrs Lyn McLeod (Thunder Bay-Atikokan): I believe it is relevant to the debate about whether the amendment is in order. Can I ask the minister for an explanation of whether, in his view, this amendment would give him, through regulation, the ability to supersede any parts of the Labour Relations Act.

Hon Mr Stockwell: Frankly, I don't know if that's a question of whether the bill is in order or not in order. As I said before, it could be an interesting question—

Mrs McLeod: It's a question of whether or not it's a substantive change to the bill.

Hon Mr Stockwell: I see your point. In my opinion, no, it is not a substantive change to the bill.

Mrs McLeod: I would consider this to be a substantive change. If the amendment gives you regulatory power to supersede the Labour Relations Act in any way, that's a substantive change.

Hon Mr Stockwell: In any way, shape or form? No, of course it doesn't give me the overriding power to change the Labour Relations Act in any way, shape or form. I mean, that's a huge bill.

Mrs McLeod: Not any aspect of it?

Hon Mr Stockwell: It gives you limited powers, within one sector, within one industry, to make some changes. That's it. You can't change—

Mrs McLeod: It doesn't give you the right to supersede the rights for that particular group of people that they would hold under the Labour Relations Act? As you know, a number of pieces of legislation have come forward from your government which have been referred to in the courts as Henry VIII clauses, in which the government has given itself, through its cabinet powers, the ability to override rights that are designated through existing acts. I'm questioning whether or not this amendment has the force of changing your bill to give you that power.

Hon Mr Stockwell: No, this deals with one specific industry.

Mrs McLeod: And allows them all the rights they currently hold in that industry under the Labour Relations Act?

Hon Mr Stockwell: Oh, are you saying, can we make some changes?

Mrs McLeod: I'm asking whether you in any way can override the rights that group of workers has under the Labour Relations Act through regulatory change in the future with this amendment.

Hon Mr Stockwell: Well, no, the amendment is time-limited as well, so no, you couldn't forever. It's grandfathered after one year.

Mrs McLeod: Not forever, but in that period of time.

Hon Mr Stockwell: But as to the specific question, I'll take it into consideration. I don't believe so, but let me consult before I respond.

The Chair: Mr Christopherson.

Mr Christopherson: Let me say first of all that I made reference in my earlier submission that I felt there are likely arguments here for a challenge under the charter in terms of the rights we have: freedom of speech and freedom of association. Since I believe it would indeed be found to be in violation of the charter of rights, it would by extension, if you agreed with that, have to be out of order here. I leave that argument in front of you.

1600

Secondly, to respond to the Minister, I think you'll find that Mr Steinberg points out very clearly, and I think he makes an excellent point, that the—well I'll read it directly:

"In our opinion, the unrestricted power to extinguish bargaining rights by regulation is at odds with the stated principles of the act to 'facilitate collective bargaining between employers and trade unions that are the freely designated representatives of the employees,' to 'promote ... employee involvement in the workplace' and 'to encourage co-operative participation of employers and trade unions in resolving workplace issues.'"

I agree with my colleague Mr Agostino that Bill 69 is horrible enough as it is, but one has to note that at least there was the involvement of the unions in the process that led to the minister having these powers to extinguish rights that construction workers now have.

If you've got an amendment in front of the committee that goes against the act, where the act says that the purpose of the act is to have employees involved and the bill that was reported to the House maintained that employees had a role to play, albeit in a dirty business—there was a role offered to them. That role is extinguished, just as dead as the collective bargaining rights of the workers are extinguished, by the stroke of the pen that this amendment gives. Not only does it change substantively what Bill 69, as reported to the House, was going to do, it removes that part of Bill 69 that was consistent with the act that said the purpose of the act is to have a role for the workers or their democratically elected representatives to play. This amendment removes the role that the workers had in the amended Bill 69.

My argument is that the amended Bill 69, as odious as it was, at least was consistent with the act. The amendment before us now makes Bill 69 inconsistent with the act in that it takes away the role of employees and their democratically elected representatives which was contained in Bill 69, which at least made it consistent with the act.

The Chair: I'm not sure. Is that a question? Did you want a response from the Minister? Mr Agostino is also down to speak.

Mr Christopherson: We've still got 25 minutes, so whether the minister responds directly or waits until after Mr Agostino is up to you.

The Chair: Mr Agostino?

Mr Agostino: Minister, if you want to answer that, because my question is to the legislative counsel actually.

Hon Mr Stockwell: OK. I'm trying to understand where you think the amendment would be out of order. I'm not trying to be pedantic about this; I'm trying my best. The best I understand is that you're suggesting that we are by amendment overriding bargaining rights obtained under the LRA. That seems to be the thrust of your legal opinion and seems to be the thrust of your comments.

Mr Christopherson: In part, that's one of the arguments that I'm making. Bill 69 was consistent with the act in that there was a role for employees. That's gone now.

Hon Mr Stockwell: OK, let me say this. The original bill did the same thing, exactly the same thing.

Mr Christopherson: That's not what we reported to the House.

Hon Mr Stockwell: Yes, the original bill—

Mr Christopherson: The original bill was amended. You brought that amendment in that had the formula in there.

Hon Mr Stockwell: OK, but the original bill did exactly the same thing, so how could the amendment then be out of order?

Mr Christopherson: Now I think you're talking in circles. I don't think you addressed specifically what I was saying. Whether or not the original bill was in order or out of order is academic now because that's not where we are.

Hon Mr Stockwell: No, it's not academic at all, because whether an amendment is in order or not in order depends very much on what the bill says.

Mr Christopherson: The bill says the employees have a role to play before you get your unilateral power, and that's consistent with the act. This amendment takes away the role of employees, and that's inconsistent with the act.

Hon Mr Stockwell: Mr Christopherson, I still would have overridden bargaining rights obtained under the Labour Relations Act. In the original bill—

Mr Christopherson: But I'm not making that point. I'm making the point about the involvement of the employees.

Hon Mr Stockwell: But that cannot put it out of order. You've got to make an argument that the amendment doesn't deal with the bill. Frankly, I don't know how you make that argument by suggesting the employees had a role to play, because it would still have overridden rights obtained under the Labour Relations Act, and the amendment overrides it in exactly the same way.

Mr Christopherson: Except that the process that got you there was consistent with the act in that the workers and their representatives still had a role. Now there's no role.

The Chair: I think we're moving into debate. Mr Agostino.

Mr Agostino: My question is to legislative counsel. It's true that maybe I'm asking you to make a political judgment on whether it would happen or not happen, but the minister today, when asked in the House, when I said that the abandonment issue was restricted to non-civil trade bargaining rights for the eight general contractors, or again, to the extension of the Toronto-Central Ontario Building Trades Council working agreement outside of border area 8, basically said, "Yes, that's my intent. I don't plan to go beyond that intent."

Just from a legal opinion, not whether to politically do it or not to do it, does the amendment in front of us give the minister the power to rule the abandonment of these contracts in the civil and non-civil trades anywhere across the province of Ontario? If a minister or a government chose to do that, does the amendment to the bill that is here today give that minister or that government that power anywhere across Ontario on the abandonment issue of any civil or non-civil contracts opening?

Ms Cornelia Schuh: It's not restricted to any part of Ontario. It's restricted to the industrial, commercial and institutional sector of the construction industry.

Mr Agostino: Is it restricted to the civil or non-civil trades? Is it restricted to either, or is it open to both the civil and non-civil trades?

Ms Schuh: I'm sorry, I'm not familiar with those categories.

The Chair: Members of committee, I have some concern now that we're sort of venturing away from what's in front of us. I believe legal counsel has already indicated that she is not able to answer the question.

Mr Agostino: But it does open it up to anywhere across Ontario. The amendment that is in front of us gives the minister the power to—

The Chair: No, I'm not going to—

Mr Agostino: It's relevant, Madam Chair, because it's—

The Chair: I think what is relevant is that I have been asked here to make an opinion on whether or not the amendment in front of us is in order, and you want a legal opinion.

I want to read, first of all, from Hansard. Speaker McLean ruled as follows in 1995: "Our precedents indicate that the Speaker is not in a position to render legal advice or an opinion...." I refer the member to rulings at page 4257 of the Hansard for June 13, 1988, page 692 of

the Hansard for April 23, 1990, and page 213 of the Hansard for April 22, 1993. I'm only grateful that I didn't have to refer to refer to any Hansard coming from Speaker Stockwell.

Speaking of Speaker Warner—and I'm really pleased that Mrs Elliott was the only one who got my joke—"Speakers ... in this Parliament and other Parliaments throughout the Commonwealth have consistently held the view that the Speaker will not give a decision upon a constitutional question or decide a question of law; nor will the Speaker give a decision on a hypothetical question." That was Speaker Warner on Monday, April 23, 1990. Speaker Edighoffer on Monday, June 13, 1988, ruled, "As I have said, the Speaker is the protector of the rights of members to seek information, but is not here to give legal advice nor to advise members on the application of the law of the province."

Having said that, and having carefully reviewed both the amendment and the bill, I am determining that the amendment is in order and would suggest that we now go through clause-by-clause consideration.

1610

Mr Christopherson: On a point of order, Chair: I would like to move that the committee appeal your decision to the Speaker of the House.

The Chair: My understanding is that you can't actually do that on a point of order.

Mr Christopherson: When may I do it?

Mr Agostino: Move a motion.

Mr Christopherson: I need the floor.

The Chair: I'll turn the floor over to you. It's not a point of order, Mr Christopherson, but you can move that as a motion.

Mr Christopherson: Fair enough. I move then that this committee, with respect, appeal your decision to the Speaker of the House. I'd like a recorded vote, please.

The Chair: We have a motion to refer my ruling to the Speaker of the House. Recorded vote.

Ayes

Christopherson, Agostino.

Nays

Beaubien, Elliot, Gill.

Mr Carl DeFaria (Mississauga East): Abstain.

Mr Christopherson: Like that's going to help you.

The Chair: That does not carry. We'll go back to clause-by-clause consideration of Bill 69. It is still debatable until 4:30. Any debate on section 1?

Mr Christopherson: May I make a suggestion? Given the absolute limit in time that's left, could I suggest that the real issue before us here today is the amendment that was tabled by the minister yesterday. If we've got to choose what to debate, at the very least we ought to be giving it a 14-minute airing as to how people feel about this, especially since nobody in the public or

any of the union leaders who represent the people who are affected by this bill, who are going to lose their rights under this bill, are going to be given an opportunity to speak. At the very least, the opposition members ought to be given an opportunity to comment on it, rather than have the 14 minutes dwindle away on the other clauses contained in Bill 69.

The Chair: OK, we need unanimous consent to stand down. You want section 5, I take it, Mr Christopherson. Is the committee in agreement with that? Does the committee agree with standing section 5 down?

Mrs Brenda Elliott (Guelph-Wellington): Just a question, Madam Chair. I want to be assured that in moving to one particular section of the bill we're not debating earlier sections that are affected. We don't normally change the order of amendments that are being debated, for very good reason.

The Chair: No. My understanding is that Mr Christopherson just wants section 5 stood down for discussion in the next few minutes until 4:30. In order to do that, I need unanimous consent. Minister Stockwell has a question on that.

Hon Mr Stockwell: Well, I'm not opposed to that, but I'm concerned with respect to the time allocation motion we're working under. We're OK? OK.

Mr Christopherson: There's a whole lot of things we're not going to talk about. This won't be one of them.

Hon Mr Stockwell: OK. I just wanted to make sure that we weren't contravening any of the standing orders.

The Chair: Is there unanimous consent to stand down sections 1 to 4?

Mr Christopherson: We'll stand down 1 to 4 so that we can deal with 5.

The Chair: To deal with 5, agreed? Agreed. Mr Christopherson.

Mr Christopherson: Now, whether we're into legal points or political points, the fact is they're points. The Minister, until yesterday—

Mr Gill: On a point of order, Chair: Should we not read the amendment into the record before we start discussing it?

The Chair: Yes, you should move it. That's correct.

Mr Gill: If I may.

Mr Christopherson: Is this your big 15 minutes?

The Chair: You can't dispense.

Mr Gill: I move that section 5 of the bill as amended and reported to the Legislative Assembly on May 30, 2000 be struck out and the following substituted:

"5(1) The act is amended by adding the following section:

"Deemed abandonment of bargaining rights—"

Mr Christopherson: Can you read a little slower?

Mr Gill: English is my second language, so I have to take my time. I don't want to make a mistake.

The Chair: Please, Mr Christopherson.

Mr Gill: "160.1(1) The Lieutenant Governor in Council may, by regulation, deem bargaining rights held by an employee bargaining agency and its affiliated bargaining agents to be abandoned with respect to an employer or a class of employers.

"Scope of regulation

"(2) A regulation made under subsection (1) may apply with respect to all of Ontario or any part or parts of it.

"Effect of regulation

"(3) On the day a regulation made under this section comes into force

"(a) the affiliated bargaining agents of the employee bargaining agency referred to in the regulation cease to represent the employees of the employer employed in the industrial, commercial and institutional sector of the construction industry in the area to which the regulation applies;

"(b) the bargaining rights vested in the employee bargaining agency under section 156 shall not be exercised for any purpose relating to the employer or class of employers referred to in the regulation in the area to which the regulation applies; and

"(c) any provincial agreement to which the employee bargaining agency is a party that bound the employer or employers in the class of employers referred to in the regulation ceases to bind them in the area to which the regulation applies.

"Abandonment of rights by other means not precluded

"(4) This section shall not be interpreted to preclude the abandonment of bargaining rights by other means.

"(2) Section 160.1 of the act, as enacted by subsection (1), is repealed on the day that is one year after the day this section comes into force."

The Chair: Any debate?

Mr Christopherson: Yes.

The Chair: Mr Christopherson.

Mr Christopherson: Well, by that clock, and assuming that's what you're going by—

The Chair: Yes. I should tell you that I've also got one request from Mr Agostino to speak.

Mr Christopherson: I know. I was just going to say, if you'd allow me, Chair, that I will stop halfway through so that my colleague gets at least half the time.

The Chair: OK.

Mr Christopherson: I wanted to begin by pointing out that this amendment, regardless of what the government says is their intent, holds the hammer over the heads of the construction unions for one year. Now, one might say a government wouldn't threaten anybody, but the only reason we've got Bill 69 on the table is because the construction unions were threatened with the removal of 1(4). Much to the denial of the parliamentary assistant and minister at times during debate, that's the reality. They were threatened. They were told, "If you don't come to the bargaining table and find something acceptable to us and the employers, we will remove 1(4)," effectively destroying the construction unions as we know them in the modern day and taking us to the nightmare that we've seen in Alberta.

This bill leaves that threat, a worse threat if you will, over the heads of every construction union labour leader, because at the stroke of a pen, regardless of what the minister said, the minister today says—we can't hold him

accountable to his words legally and, secondly, there could be a new minister tomorrow. A minister could come along, if they wanted to take out retribution—and we know that this is a bully government; they believe in retribution, they go after people who speak out. They went after Jimmy Moffat in the House the other day. God forbid anybody should speak out against this government or face the wrath of this government. Again, the fact that we've got Bill 69 in front of us is evidence of that.

1620

Now we also have another construction bill. The reason I raise this threat notion is because this amendment allows the minister, at the stroke of a pen, to eliminate the collective bargaining rights of tens of thousands of workers—unprecedented. That threat remains for a year. Never mind what the minister does a week from now or a month from now. For a year, the minister has the power, the absolute total power, to wipe out the bargaining rights of every construction worker in the entire province.

It just so happens we've got another labour bill in the House, Bill 139, which further attacks the construction workers' rights, and we know that there are changes coming under the Employment Standards Act. We don't know what other nightmare bills you're dreaming up in the back room these days that are going to face us over the next year.

So what does that say? It tells these labour leaders, "You'd better keep quiet. You know, you've been making an awful lot of noise coming down here and saying bad things about me and picketing outside the Legislative Assembly. We don't like that, and if you keep that up, just remember what I can do to you."

So a construction bill is in the House that takes away workers' rights. These democratically elected leaders are speaking out against this on behalf of their members, as they should, and now we've got the minister who will have the power to totally eliminate, decimate, wipe out, extinguish every bargaining right that their members have, at the stroke of a pen. And you're going to tell me that's not going to have some kind of a dampening effect on the ability of these labour leaders to exercise their democratic rights in a pluralistic society to speak out against the government of the day? Especially when it's a government that, step after step, has taken away the rights of workers?

Given the track record of what this government has done, especially to the most vulnerable in our society, there's no reason we shouldn't believe that you would use that threat. Would you say it directly? No. And I don't know that you put in writing your threat about subsection 1(4), but it was real, that threat was there. I suggest to you that passing this amendment and giving that kind of power to the Minister of Labour in a Harris government is tantamount to saying to the democratically elected labour leaders in the construction unions across Ontario, "Don't you dare say a word or we will wipe you out."

Surely to goodness in this province, in this country, there's a law somewhere that says you can't threaten workers and their democratically elected leaders in that

fashion. This is an obscene bill. I don't trust the minister. I sure as hell don't trust the Premier. Any power they've ever been given, they've exercised. Construction workers have every right to be fearful and angered that this government would bring in a bill that gives such sweeping powers, undemocratic powers, to their Minister of Labour.

Mr Agostino: To add in support of my colleague from Hamilton West and what he has said today, this bill has not been one of the finest hours for this government. You have shown your nastiness. You've shown your ability to be bullies. You've shown your ability to try and intimidate people. Frankly, you're running this thing more like we would see somewhere in South or Central America than here in Ontario with the democracy we have.

First, you held a gun to their head. The minister's come clean. He's admitted a number of times now, "Yes, I threatened 1(4)." He said it in the Toronto Star in June: "Either go along with this or it's 1(4)." You pointed a gun to their head and you said, "Agree with me or I'm going to blow your brains out." That was how you got negotiations started in 1(4).

Then we have the incident the other day in the House where the minister launched a personal, bitter attack on Mr Moffat for daring to speak out. That is not a democracy. That's what happens in Third World countries. Personal, nasty attacks on individuals because they challenge and opposed you is undemocratic at its core. You've practised that to a fine art with this bill. This is 1(4) through the back door. You didn't have the courage to take on—1(4) through the front door would have basically brought labour relations in this province to the point of explosion. So you think you're going to be cute and you're going to try through this amendment here to achieve the same thing. Frankly, this has the full potential to be as bad as 1(4) would be through the front door because it gives the minister sweeping powers to do whatever he or she wants at any time to any contract.

The fundamentals of bargaining, of collective agreements, you're ripping apart, you're throwing out the window here and you're saying, "Trust us," from a government that's made an art of beating up on labour since the day it got elected to office. So no, we don't trust you. No, we don't trust the minister. No, we don't trust the Premier. We don't trust the government side of the House when it comes to labour relations, because clearly, as this bill is another prime example, what this is all about is rewards for your friends. What this bill is all about is the Liberals for Harris, the boys who donated hundreds of thousands of dollars to your campaign. Now they line up outside the Premier's door and they get their just reward. This is what this bill is all about.

There was no need to introduce this bill. We have labour peace. We have stability right now in the construction industry. We have growth in the construction industry. We have a province in which people are working in construction. Why do you want to disrupt that? What rationale was there, except payback to your friends who helped you and raised a ton of money for you, and

attend your \$25,000-a-table dinners? No one has given any explanation outside, "The request was made by the Big Eight." The request was made by Geoff Smith, representing Ellis-Don. That's what this bill is all about.

This is clearly another attack on labour, on construction, on working men and women in this province. And what is even more disgraceful than this bill has been the way this government has approached this bill, the way this government has threatened, intimidated, as I said earlier. Basically, now you're going to have this carrot hanging over their head. Now what you're saying is, for the next 12 months, "If you don't play ball with us, we've got the power to go beyond even what the minister committed to in the House. We've got the power to lock you all out. We've got the power to rip up every single agreement across this province in civil and non-civil trades." That is the power you're giving this minister and this government, and you're saying, "Trust us." Frankly, with your track record, you don't deserve to be trusted. The labour movement and the working men and women don't trust you. It's a bad amendment to a bad bill. The honourable thing to do would be to withdraw this whole damn thing and restore the peace that is now there in labour relations.

1630

The Chair: Pursuant to the orders of the House, I am now required to put the bill to clause-by-clause consideration. We'll take the amendment, section 5 of the bill, as moved by Mr Gill. All in favour?

Mr Agostino: Recorded vote.

The Chair: Recorded vote. We have to stand that down, apparently. We'll go back to section 1.

Shall section 1 carry? All in favour?

Mr Christopherson: Is this the first formal vote you're taking?

The Chair: Yes, we're going to section 1.

Mr Christopherson: Did you vote on the other amendment?

The Chair: We're standing it down. We'll vote at the end.

Mr Christopherson: Why can't we just vote on it now?

The Chair: Because of the time allocation motion. We have to start from the beginning, from scratch.

Mr Christopherson: So we're not even going to get a chance to register our opposition to this?

The Chair: You will have a recorded vote, Mr Christopherson, but we have to stand it down to the end.

Section 1: shall section 1 carry? All in favour?

Mr Agostino: Recorded vote.

The Chair: Recorded vote. We'll stand that down. Section 2: shall section 2 carry?

Mr Christopherson: Recorded vote on all of them.

The Chair: Recorded vote on all of them? Then we'll just go back to the beginning. Section—

Mr Christopherson: I'm sorry, point of order. There were times when we tried to do this when we had a bill where we did all agree and we wanted to move it along. I think you might have even been in the chair at the time, Brenda. It seemed to me that we couldn't stand down the

votes and do them as just one vote at the end. Am I thinking of something else?

Hon Mr Stockwell: I don't think it was time-allocated maybe.

The Chair: If I could just go through again the orders of the day, "Any division required shall be deferred until all remaining questions have been put and taken in succession with one 20-minute waiting period allowed pursuant to standing order 127...."

Mr Christopherson: So you're going to do what I requested and have a vote on every one.

The Chair: A vote on every one. So we'll start on section 1 again.

Section 1: shall section 1 carry?

Mr Christopherson: Recorded vote.

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: Section 2: shall section 2 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: Section 3: shall section 3 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: Section 4: shall section 4 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

The Chair: Section—

Mr Christopherson: Whoa. You can't extinguish our rights too, you know.

The Chair: Opposed?

Nays

Agostino, Christopherson.

The Chair: That carries.

Now we'll do the amendment to section 5.

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: That carries.

Shall section 5, as amended, carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: That carries.

Section 6: shall section 6 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: That carries.

Section 7: shall section 7 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: That carries.

Section 8: we have three Liberal amendments.

Section 8, a Liberal amendment on page 3. Recorded vote. All in favour of Liberal amendment number 3?

Ayes

Agostino, Christopherson.

Nays

Beaubien, DeFaria, Elliott, Gill.

The Chair: That not having carried, Liberal amendments four and five are out of order.

Shall section 8 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: That carries.

Section 9: shall section 9 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: That carries.

Section 10: shall section 10 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: Section 10 carried. We'll go to section 11.

Section 11: shall section 11 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: That carries.

Shall the title of the bill carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: That carries.

Shall Bill 69, as amended, carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: Shall I report the bill, as amended, to the House?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson.

The Chair: That carries.

This meeting is adjourned.

The committee adjourned at 1636.

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Lundi 20 novembre 2000

Standing committee on justice and social policy

Social Housing Reform Act, 2000

Comité permanent de la justice et des affaires sociales

Loi de 2000 sur la réforme
du logement social



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Monday 20 November 2000

*The committee met at 1548 in room 151.*SOCIAL HOUSING REFORM ACT, 2000
LOI DE 2000 SUR LA RÉFORME
DU LOGEMENT SOCIAL

Consideration of Bill 128, An Act respecting social housing / Projet de loi 128, Loi concernant le logement social.

PUTTING HOUSING BACK ON
THE PUBLIC AGENDA

The Chair (Ms Marilyn Mushinski): I call the meeting to order.

Good afternoon, ladies and gentlemen. Please accept my apologies for the delay in getting started. Unfortunately, the orders of the House rule that we cannot start until petitions have been read.

This is a meeting of the standing committee on justice and social policy to consider Bill 128, the Social Housing Reform Act. Each group has up to 20 minutes in which you will be permitted to make your submission and for questions to be asked, if there is time.

The first group we have this afternoon is Mr Alan Redway, co-chair of Putting Housing Back on the Public Agenda. Good afternoon, Mr Redway.

Mr Alan Redway: Thank you very much, Madam Chair and members of the committee. I am one of three co-chairs of a non-partisan organization known as Putting Housing Back on the Public Agenda. We are a broad coalition of people interested in affordable housing and we come before you today in that regard. John Sweeney is the former housing minister for the province of Ontario, and the third co-chair of our organization is Marion Dewar, a former mayor of Ottawa and a former member of Parliament. I, of course, am a former member of Parliament and Minister of State (Housing) federally.

The purpose of Bill 128 is stated in section 1: "to provide for the efficient and effective administration of housing programs." However, everyone knows that the overarching purpose of the bill itself is to require local bodies to be responsible for financing and administration of social housing, known, I guess, in the media as the downsizing of the provincial role in housing.

There are very serious questions to ask about the wisdom of downsizing or downloading the financing of

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Lundi 20 novembre 2000

social housing to the local level. We, our organization, Putting Housing Back on the Public Agenda, feel this will weaken rather than strengthen the supply of existing affordable housing, and the loss of affordable housing is not in the best interests of any sector of our society. We do not support the downloading of these costs.

It's useful to set this bill in its historic context with regard to the provision of affordable housing in Ontario. The first affordable housing initiatives were undertaken by municipalities, specifically the city of Toronto with the Toronto Housing Co way back in 1912. That company constructed several projects. The city's interest in housing was renewed in the 1930s and subsequently the city initiated, financed and developed the Regent Park project in 1949. Social housing was also built in other municipalities in Ontario.

It was not until 1964 that the Ontario Housing Corp was created. OHC assumed the construction and management of existing and new social housing and the assets of local housing companies were transferred to OHC as those local companies were disbanded.

But it proved very difficult to manage housing from the provincial level, and the provincial government looked for ways of not being blamed for the problems in the management area that emerged. So in the early 1970s the then Minister of Housing in Ontario, Claude Bennett, who later served, while I was minister of housing federally, as the chair of Canada Mortgage and Housing Corp in Ottawa, made the decision that the best way to deal with that from a provincial point of view was to establish local housing authorities which would be responsible for the day-to-day management of public housing according to OHC rules. The local housing authorities would remain firmly within provincial control.

The trade-off there was that their costs were being paid for by the province and they were being operated according to provincial policies, OHC policies and rules. That of course created some distance between the minister and the management of the housing, since the latter reported to a board which included local representatives. This device split the responsibility for day-to-day management from the authority for setting policies and guidelines concerning this management.

A great number of people have noted that this separation of responsibility and authority has been at the root of management problems in public housing. Those responsible found they didn't have control of the levers of authority. It made effective management very difficult,

if not impossible, and public housing has had its problems as a result ever since.

The co-op and non-profit housing that was built in the last 25 years has not suffered from the same problem since it has been directly managed, and by all accounts managed efficiently and effectively. From time to time we hear the province's concerns that this kind of housing has been a boondoggle but as yet, I, for one, have never seen the evidence of this boondoggle, and if there was some boondoggle, I don't think it applied universally; it clearly must have been some individual cases. I wish the province, if it feels there were cases where there were problems here, would present us with some actual public evidence of that, rather than making statements that it has been a boondoggle and not providing any evidence to that effect.

Every good manager in the public and private sectors knows that he or she must have the authority to manage in a manner that's responsible. If authority is hived off from responsibility, good management becomes really impossible. The breach of this simple rule of good business has bedevilled public housing in Ontario now for almost 30 years. It was a mark of difference between public housing and other forms of social housing. The only good thing to say about the arrangement was that the provincial and federal governments paid a goodly share of the cost of the subsidies needed. These costs were in the manner of income transfers, which made sense given the situation.

Unfortunately Bill 128 builds on this confused management tradition. It confirms the provincial government's refusal to provide funds to cover the costs of social housing, and it takes this separation of responsibility for day-to-day management from management authority to the extreme and applies it not only to public housing but to all other kinds of social housing as well.

The legislation gives the provincial government control over every possible level of detail in the way social housing will be managed. It creates an extreme regime of rule-setting for local authorities to follow, with the province bearing no responsibility of any kind. It also cancels existing contracts, which specify these matters for co-ops, and replaces them with a great many rules that the minister will proclaim.

In reviewing the bill, we've been unable to count the number of times the legislation includes the phrase "as may be prescribed" or the number of times reference is made to the minister's power to make regulations. We would estimate that references to one or both of these mechanisms is found, on average, about four times on every page of the legislation. This means there are more than 400 references to rules that will underpin this legislation. As a former minister, I know you need rules and regulations but there is a limit to how much—how little lack of detail there should be in legislation of this sort.

Look, for instance, at section 88, "Duties of Housing Providers." This section literally wraps the housing provider in a welter of regulations made by the minister and takes away any independent decision-making of any

kind. What self-respecting manager in the private sector would wish to work in such an oppressive environment? The legislation even sets out in section 94 that it's the minister who will establish a mandate for the housing provider, not the provider itself.

We believe management is best done at the local level, with funding for income transfers required coming from the provincial and federal governments. This legislation reflects neither of these principles.

Some of the proposals in the legislation are extraordinarily complex. We have found it very difficult to make sense of the rules that will follow from section 52, for instance, about the transfer of motor vehicles. We are unable to determine what kind of corporation is set up in section 135, since this section makes the corporation being established subject to some laws but not subject to others. It says that the Corporations Act doesn't apply, but some sections of the Business Corporations Act do apply with necessary modifications. It's a pick and match arrangement that leads in circles.

The legislation purports to transfer from the province the control and ownership of this kind of housing. We believe this transfer is unclear since section 49 says local authorities can do nothing with the properties without the approval of the minister. We think a court may very well conclude that the ownership remains, at least to some extent, with the provincial government.

1600

The Chair: Ladies and gentlemen, I realize the room is full. There is an overflow room, committee room 2, to your right and right again; actually it's to the west. Carry on, Mr Redway.

Mr Redway: Section 49, as I was indicating, says the local authorities can do nothing with the properties without the approval of the minister. We believe a court may very well find that the province has at least some ownership in this housing. It should be noted that the provincial government is requiring the local authorities to take over buildings that are widely known to be in need of significant repair—some estimates run to over \$1 billion—but not one cent is provided to cover these costs that are being downloaded. When tenants sue for non-repair, a court, in our view, would be hard pressed not to agree that the provincial government be joined as the party primarily responsible for these costs.

Management policy and responsibility for money should be in the same hands. If the province thinks it needs to exert as much control as this bill gives it over the management of social housing, then in our view it should manage this housing and cover the costs itself. It's unworkable to require local structures to pay for social housing while being forced to wear a straitjacket of provincial management rules.

Bill 128 is a step backward and is in no one's interest. It will not achieve the purpose referred to in section 1, namely, effective and efficient administration. It is flawed and in our view it should be abandoned.

The Chair: There's time probably for three one-minute questions starting with Mr Caplan.

Mr David Caplan (Don Valley East): Mr Redway, I understand from some of the history of housing that there had been a long-standing provincial demand in some quarters for housing to be transferred to the provincial level. This legislation goes one step further: it transfers it to the municipal level. I've never heard, and perhaps you can correct me, of any municipality ever requesting this kind of ability to fund and administer housing at the local level. Have you ever heard of that?

Mr Redway: Certainly in my time as federal housing minister, I absolutely never heard of that and I haven't heard of it since. While you're quite right that there are some provinces that feel housing is a provincial responsibility, they never, ever made representations to me that housing should be a municipal responsibility. Quite clearly, across Canada there are probably three or four provinces at the most that can afford to take on the responsibility of social housing. The rest of them just can't do it. In my time as a federal minister, many provinces opted out of federal programs because they couldn't afford the provincial share themselves.

Mr Caplan: Fair enough.

Mr Rosario Marchese (Trinity-Spadina): I first want to congratulate all three of you, the co-chairs, for the work you've been doing voluntarily, each coming from separate parts of the province.

My question has more to do with the funding. My biggest preoccupation is that we're going to be funding for housing from the property tax base, from homeowners, tenants, and yes, to some extent business as well. That's my biggest worry. It should be coming out of provincial income as opposed to property tax. Do you want to comment on that?

Mr John Sweeney: It's interesting to note that the province made the decision a little while ago to take the cost of education out of the municipal tax base and put it at the provincial level. We would certainly say that the same thing ought to be true with respect to social housing. It makes even less sense that the cost of this particular service be at the local property tax base, particularly, and again I would ask someone to look at the rationale, when the municipality has only, for all practical purposes, the property tax base. It has no access to sales tax or gasoline tax or income tax, and on and on the list goes. So it really is quite inappropriate to be put at that base. There's a big difference between saying that the management, even the administration, of social housing could be at the municipal level but the costing, the financial responsibility for it, simply can't be, and as my colleague has already pointed out, it will not be efficient; it will not be effective. Our concern is that if this goes through, things are going to get worse. They're not going to get better.

Mr Marcel Beaubien (Lambton-Kent-Middlesex): As a former municipal politician I appreciate some of your comments. I must admit I agree with some, but others I certainly don't agree with. First of all, I think there are other ways of providing housing. I think Habitat for Humanity has been working on all the continents of

this world and I think they give title ownership and it does work. There are programs that work.

I think Mr Redway mentioned that you fail to see where the boondoggle is. My question to you would be, I think the market value of the public housing stock is about \$4.5 billion and I think the debt load on that is about \$8.5 billion. Could you explain that to me if that's not a boondoggle, sir?

Mr Redway: I'm not sure that makes it a boondoggle. Obviously the cost of land has varied over some period of time. As you know, it was much higher in the late 1980s and the mortgaging provisions that were put in place at that time certainly reflected the fact that the fair market value of that land was there at that time. It may have changed. I can tell you right now I just closed a real estate deal in the private sector on Friday where commercial and residential buildings were bought for about \$650,000 in the early 1990s and were sold now for something in the neighbourhood of \$390,000. That's the private sector and that's what happened to the cost of land and the mortgaging that was put in place at that time.

The Chair: Thank you very much, Mr Redway and Mr Sweeney, for your presentation.

Mr Sweeney: Can I just make one observation?

The Chair: As long as it's no more than 10 seconds.

Mr Sweeney: With respect to Habitat for Humanity, as the former chair of their national board I can tell you they do wonderful work, but the potential impact is considerably below what the need is. In our area we produced about 40 houses. The need is for 4,000.

The Chair: Thank you, Mr Sweeney. Ladies and gentlemen, we are under a very tight time schedule, so I would ask you to please try and refrain from too many expressions of applause.

Mr Beaubien: Do I get a 30-second rebuttal?

The Chair: No, you don't, Mr Beaubien.

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PUBLIC HOUSING FIGHTBACK CAMPAIGN

The Chair: The next presenter is Ann Fitzpatrick, of the Public Housing Fightback Campaign.

Ms Ann Fitzpatrick: My name is Ann Fitzpatrick. I'm a member of the Public Housing Fightback Campaign on behalf of the Children's Aid Society of Toronto. I'm joined by tenants Yasmin Maharaj, Arlene Goneau, Cliff Martin and Carolyn Fenn. Regrettably, more tenants and organizations do not have a chance to speak to you today. On a bill of this magnitude, two afternoons is simply insufficient and undermines the democratic voice of those affected.

We began in 1995 to oppose the government's plan to sell off 84,000 units of public housing, an action that would impact over 200,000 children, parents, seniors and disabled people. More recently, through letters to the minister, we opposed the plan to sell off 5,400 units of public housing for families. To date, thankfully, social

housing stock has not been sold off but Bill 128 opens this door to sell-offs.

This downloading bill will undermine social housing in many ways, which the tenants will speak to. Public housing is one of the most cost-effective forms of providing housing to people in need, and we cannot risk losing this housing. The option of shelter allowances to private landlords will cost two to four times that amount. The Ontario government committed to provide 10,000 households in need with rent supplements in private housing in 1999, but in Toronto they're having difficulty in finding landlords to meet these targets.

Our overarching alarm is that this legislation leaves so much open to the discretion of the government of the day to set regulations without public hearings and debate in the Legislative Assembly. Tenants deserve input into the future of their homes. At the Children's Aid Society of Toronto housing and homelessness is a factor in almost one in five admissions to care. This costs \$1,700 a month for each child in care. Contrast that with the previous cost to the province of about \$200 per month for a public housing unit. A strong social housing safety net is a cost-effective investment.

We urge you to withdraw this bill or, at the very least, ensure that regulations developed on this bill go to public hearings across the province and go before members of the Legislative Assembly. I'll turn it over to Yasmin.

Ms Yasmin Maharaj: Good day. My name is Yasmin Maharaj and I'm a parent and tenant living in the Jane-Finch community.

Supply of rent-geared-to-income housing: There are concerns that the supply of affordable housing will be reduced. The bill is too vague, and tenants will have to wait for regulations on many matters to see the real impact on their lives and on their housing. For example, how many rent-geared-to-income units will be targeted in plans for Toronto? In future years, will cities act on their powers to reduce RGI housing further? The bill states that cities could increase subsidized units in Toronto by up to 10% of the target in plans for RGI housing. In public housing in Toronto alone, this would be a loss of about 2,900 units. This is shameful at a time when we have over 50,000 households on waiting lists for social housing in Toronto.

Affordability. This bill does not say whether rent-geared-to-income rents will be set at 30% of family income or whether it will be higher. As a tenant on a fixed income, I can tell you we cannot afford higher rents without a cost to our health and welfare. Tenants who live in public housing have seen the housing get less and less affordable over the years. At the same time, their incomes have dropped. Many of us pay new user fees imposed by MTHA for parking and utilities. These fees can be hiked up dramatically with little notice to tenants. With the city burdened to pay for social housing, we are worried about more and newer user fees and higher rents. Without affordable housing and social housing, we will have more hunger, more use of food banks, more economic evictions, more homelessness.

Eligibility for social housing and future integration social services: It seems that this bill gives the city the power to centralize a process where tenants are assessed for eligibility and rents are set. Disabled people, seniors and others may not want to go to a local welfare office to deal with their social housing eligibility. This is not as accessible for tenants who prefer to deal with their housing providers locally. Who is eligible for housing under the new bill? Again this is left up to regulations. Will the government in the future make regulations that will integrate benefits and make tenants ineligible to receive benefits for more than one program, for example? If you live in public housing, will you be eligible for OSAP or child care subsidy or even welfare?

I will now turn it over to Arlene Goneau.

Mrs Arlene Goneau: My name is Arlene Goneau. I live in public housing with my family and children and am co-chair of Jane/Milo Residents' Council. For tenants like myself there are no private rental housing options. You just have to look in the newspapers. Those rents are not affordable since rent controls came off vacant apartments. We need to keep our social housing. I am concerned about this law for two main reasons: this law opens up the city's right to sell off some social housing units and contract out and privatize more public housing management.

Tenants have opposed provincial plans to sell off units of social housing for the past five years. Now this bill gives the cities the right to sell off units if the minister approves it. Where would those tenants live? What options does this give when they're kept on a huge waiting list for social housing? What does that do to the housing supply that tenants and governments have paid for as an investment in a social safety net? If all social housing units are sold, where does the money go? There are criteria to sell off units. For example, could the city sell off where they have a long social waiting list?

Low vacancy rates: Public housing is not just a service provided by the government; it's our home, our community. People like me try to make a healthy place for our children to grow up. Families paying 80% of their incomes on rent or living in shelters do not have a fair chance. We want to live in housing that is publicly accountable. I know first-hand that privatization is a real threat, because MTHA were planning behind closed doors to privatize my building and others in my community. Our residents' council fought it with other residents' councils in the area, and thank God we were able to stop it. Privatization might save money because there are cuts in staffing, cuts to staff salaries, cuts to budgets, and all these savings are at the expense of tenants' well-being and quality of life.

Private companies that want to make a profit: We would rather see public rent dollars go to bettering communities and making necessary repairs instead of draining funds from the community. We also want qualified staff who are trained and sensitive in dealing with tenants. As a tenant I want to be able to deal with a housing provider who is accountable to tenants, who

know best the conditions in their communities and their needs.

Mr Cliff Martin: My name is Cliff Martin. I'm the co-chair of the St James Town Tenants' Council. I want to talk to you about a few concerns I have about this bill.

Say for pay and tenant participation in housing and planning: The Ontario government talked about the downloading legislation setting the ground for more say for pay for cities because they will fund and manage social housing. Tenants demand the same too. We pay 59% toward operating costs of MTHA, giving us the majority stake in our future homes. In fact, we pay a higher percentage than the other two senior levels of government in operating costs.

The potential for so many changes with no tenant input is devastating. Both the federal government through CMHC and the provincial government through OHC at various stages in history have valued tenant participation in planning and decision-making in social housing communities, and it's been cost effective. This bill is silent on the responsibility that service managers or housing providers have to involve tenants. We need some provincial standards to set out the expectation that cities cannot ignore the voices of tenants in the future management of social housing.

Regulations need to be approved by the Legislature. It is troubling to tenants that Bill 128 leaves the most important decisions up to regulations. This leaves tenants in legal limbo. What are you really supposing? Why not be clear and put them on the table so they can be debated?

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For example, you have not guaranteed that the 84,000 public housing units across Ontario will be preserved, of which 29,000 are in Toronto. It seems that the cities will have the door open to sell off units, to make more of them market-rent units or to move from providing homes to rent-supplement agreements with private landlords instead.

I do not support legislation that gives zero protection to tenants. It's not social housing reform; it's just dumping the responsibility.

Furthermore, the bill has no overarching preamble that spells out high principles other than the downloading of the housing. There's nothing to ensure efficiency or effectiveness. Tenants would like to see a statement of purpose that spells out our government's commitment to live up to the international UN agreements on the right to housing and the government's role to preserve and expand social housing programs to meet the needs of citizens, and that spells out the value of involving tenants in the planning and administration of their communities.

I'd like to turn to Carolyn Fenn for conclusion.

Mrs Carolyn Fenn: Good afternoon. My name is Carolyn Fenn, president of the Greenbrae Resident Group. I will be making the concluding statements.

I am a disabled senior and a veteran's wife and have lived in a Metropolitan Toronto Housing Authority apartment for several years. As a senior on a fixed income, I rely on a rent-geared-to-income subsidy. I have been a

president with residents' groups and associations in MTHA communities over the past 24 years and have played a key role in my community.

For many like myself, social housing is an essential part of our safety net. This housing was originally built for veterans and their wives. Now I'm finding in my golden years that I have to worry about the stability of my home.

Downloading will lead to disrepair and poor quality of housing. I am concerned that this bill will result in more disrepair and neglect of our homes. With the budget cuts over the last number of years and the move to private management, our buildings are falling into more and more disrepair.

Your government has not carried out an independent and thorough audit of the physical condition of each and every building. I understand this government did an assessment of about 10% of the units across Ontario. Peel region estimated it will cost \$2 billion to make necessary capital repairs across the province. In Toronto, many of our public housing buildings are 30 or more years old. They are in need of serious repairs.

Your bill states you will not be liable for any repair needs after the properties are transferred. This is not a responsible action. Your government reminds me of the Grinch who stole Christmas. You should do a proper audit and should be liable for the capital dollars needed to fix the buildings up to standard. It is unfair to put this burden on the property taxpayers of Toronto and other cities in Ontario. I want to live in dignity. I don't want to live my golden years in slum housing.

Let me give you an example. In my community, we have units with mould that is just painted over and over again. This is a toxic substance and can lead to health problems. We have extensive flooding of apartments caused by holes and damage in the bricks on the exterior of the building. MTHA, now through a private management company, does Band-Aid work, making the building look nicer but not dealing with the root of building problems.

Others have presented the risk of selling off units or a reduction in rent-geared-to-income assistance. I echo their concerns. What kind of province allows people to live on the streets and puts our homes and security at threat? I don't want any changes where I am uprooted at my age from my home. As a member of the Royal Canadian Legion, we always say, "Lest we forget." I am a voter and I shall remember.

Thank you on behalf of Public Housing Fightback. We hope you heard our concerns.

The Chair: Thank you very much for your presentation this afternoon. Unfortunately, we are running so late that there won't be time for questions today.

PRIORY SQUARE CO-OPERATIVE HOMES

The Chair: The next presenters are Scott Piatkowski and Keith Brown of priority square co-op homes. Good afternoon, gentlemen.

Mr Scott Piatkowski: Madam Chair, members of the committee, thank you for the opportunity to address the standing committee on the important subject of Bill 128, the Social Housing Reform Act. My name is Scott Piatkowski and I am the coordinator of Priory Square Co-operative Homes. It is Priory Square, although we do consider housing to be a priority.

This is Keith Brown, the president of the co-op. We are speaking to you today on behalf of the 120 members and more than 140 children living at Priory Square co-op.

Mr Keith Brown: Priory Square is an 82-unit town-house co-operative located at the south end of Guelph. Like all housing co-ops, we are proud and fiercely protective of our independence and autonomy. We feel we have earned the right to manage our housing by doing so effectively over the past nine years through our elected board of directors and our eight standing committees.

Co-op members are expected to be involved in the community, and the vast majority of them are. On October 1, for example, more than 85% of our members attended our 10th annual general meeting. This three-hour meeting included approval of our audited financial statements, election of board members, passage of three new co-op bylaws and a question-and-answer session with candidates in the municipal election. We could talk about our co-op all day, but due to time restrictions we would instead invite members of the committee to visit our Web site at www.priorysquareco-op.on.ca.

The board, members and staff of Priory Square Co-operative Homes are very concerned that Bill 128, the Social Housing Reform Act, would undermine the very qualities that make the co-op such a great place to live. While we continue to question the rationale for down-loading housing to the municipal level, in the interests of time we will focus our remarks on trying to improve the proposed legislation. We recognize that the government has more than enough legislative votes to pass this bill, but we are hopeful that members of all parties will be open to making improvements to it.

Mr Piatkowski: Currently, Priory Square has an operating agreement with the province of Ontario which sets out the roles and responsibilities of both parties. This legislation would unilaterally cancel that agreement and place the co-op's operating rules under legislation and regulations that can be amended or clarified without any consultation with housing providers.

The bill also creates additional levels of bureaucracy. Instead of dealing solely with the Ministry of Municipal Affairs and Housing, our co-op will now be dealing with the ministry in areas relating to mortgage renewals and program framework, with the county of Wellington on matters of program administration, and with a new province-wide Social Housing Services Corp on reserves, insurance and purchasing. Each of these layers of accountability may in fact impose new rules and new reporting requirements.

Mr Brown: Our members are most concerned about the proposal to have municipalities take over the administration of rent-geared-to-income assistance, also

known as RGI. Municipalities would be in the position to make all decisions relating to eligibility, including setting the local rules, income verification, housing charge or rent calculations and payment deferrals.

While the legislation allows municipalities to contract with another party to administer this program, there is no requirement that housing providers be consulted in this decision. Furthermore, while co-ops and other non-profit housing providers would obviously want RGI administration delegated to them, essentially preserving the current situation, the legislation does not specifically mention them as a potential administrator, only as another person.

Mr Piatkowski: There are a number of reasons that municipal administration of RGI programs would be considerably less efficient and less desirable than the current system of administration by individual housing providers.

When a member of Priory Square co-op experiences an increase or decrease in income, they are able to come to the co-op office, present their new income information, and actually wait while their new housing charge is calculated. This often occurs in the last several days of the month. It allows members to present a cheque to the office immediately. Both arrears and retroactive adjustments in amounts owing are avoided under this situation. With all due respect to Wellington county social services, this kind of responsiveness and sensitivity would simply not be possible under municipal administration. The larger the system, the more difficult it is for people in the system to get answers.

Furthermore, co-op members appreciate the ability to sit down with co-op staff people for an explanation of their calculation. It simply doesn't make sense to force them to visit the social services office more than four kilometres away in order to defer payment or submit new income information. Members vastly prefer dealing with the one person they know in the co-op office, who is just steps away from their unit.

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Because less than 10% of members receiving rent-geared-to-income assistance are currently involved with the welfare system, municipal administration would drag people into a system with which they have no other reason to interact. Many co-op members justifiably take pride in having "escaped" from this system and they really don't want to be re-stigmatized by the changes proposed in this legislation.

Lastly, we believe there may be a perception that co-ops are not sufficiently vigilant in monitoring potential incidents of fraud. In fact, co-op boards and staff are far more effective at detecting fraud than municipal bureaucrats could ever be, simply because we are on the ground. Priory Square has a good record of uncovering income which has not been reported and has in fact evicted several households which have been guilty of this practice. We take our responsibility to administer public funds very seriously and we're very much aware that any incidents of fraud that are not dealt with undermine the integrity of the system as a whole.

Mr Brown: We do not believe that RGI administration should be transferred to municipal service managers until the service manager has consulted with housing providers and presented a business case for this change. Specifically, we are asking that a new subsection be added to section 71 of the bill, requiring such consultation and requiring that a business case be presented. If this change is made, we are confident that most municipal service managers, including the county of Wellington, will conclude that RGI administration is best left to housing providers.

We appreciate the opportunity to appear before this committee and we hope that the members of the committee will agree to the changes which we have proposed, as well as those proposed by other housing co-ops and co-op housing organizations that will be appearing before you. We have provided you with a written copy of our remarks, but rather than a separate attachment of amendments, we will refer you to ones being provided by the Co-op Housing Federation of Canada (Ontario Region). We ask the clerk of the committee to include these documents in the records of these hearings. Thank you very much.

The Chair: Thank you, Mr Piatkowski and Mr Brown. There's time for about one question each. Mr Caplan.

Mr Caplan: Section 88 of the act outlines the duties of housing providers and I'd like to get your opinion on some of these. "Every housing provider is required to meet such provincial requirements as may be prescribed." It goes on to say, "The housing provider's corporate structure, including its constating documents and bylaws; ... the housing provider's operation, management and maintenance of ... projects and it's selection of property managers; ... " In fact, I think it even goes on to say the province will have the power to appoint who is going to be on your board of directors.

You've described the nature of co-ops. How are some of these duties and changes going to affect the nature of Priory Square Co-op in Guelph?

Mr Piatkowski: We're actually very concerned, as we indicated, that the provisions undermine the very nature of housing co-ops. The reason that housing co-ops work so well is that their boards of directors are selected by election from among their members. There are provisions within our co-op bylaws to remove directors who are behaving improperly and elect new ones from among the membership. The aspect of the legislation to which you referred allows the province, or the municipal service manager, to appoint directors from outside the community who may in fact have no ties to the community and no knowledge of the needs of the community. Yes, we are very concerned about that and the ability to pass regulations without consultation. "As might be prescribed" is a term that comes up far too often in this legislation for our liking.

Mr Marchese: I may have missed the first part of your presentation, but did you comment on some of the

things that were covered by the Co-operative Housing Federation?

Mr Piatkowski: We did.

Mr Marchese: More bureaucracy and less autonomy, the continued financial uncertainty in terms of surplus dollars, and no new housing. Did you—

Mr Piatkowski: We touched on the autonomy issue. We're leaving it to our good friends to bring up the other issues. As Mr Brown indicated, we fully support the amendments that are proposed in this rather thick document.

Mr Marchese: Thank you.

Mr Beaubien: Mr Brown, Mr Piatkowski, thank you for your presentation. You seem to have some concern with the RGI administration and you suggest that, under section 71 of the bill, changes should be made, but when you talk about making a business case for this change, what are you trying to tell me?

Mr Piatkowski: We're not convinced that such a case exists. We don't think it would be a good idea. We think that if the municipal service managers were required to make such a case, they would come to that realization as well. We don't think they have the capacity or the same expertise that we have, or the ability to administer them as effectively as individual housing providers.

Mr Beaubien: So you have concerns they may not be able to respond to the needs of the tenants quickly enough?

Mr Piatkowski: Exactly.

The Chair: Thank you, gentlemen.

PEGGY AND ANDREW BREWIN HOUSING CO-OP

The Chair: The next speaker is Mr Du Maresq of the Peggy and Andrew Brewin Housing Co-op, Toronto. Good afternoon.

Mr Michael Du Maresq: Good afternoon, Madam Chair. My name is Michael Du Maresq and I have been a member of Peggy and Andrew Brewin Housing Co-op in downtown Toronto since it first opened in 1995. We are about to celebrate our sixth anniversary of existence.

Brewin is a virtual microcosm of the city of Toronto. We have members of different races, religions, sexual orientations, socio-economic backgrounds, individuals dealing with long-term illnesses and people with physical or developmental challenges. We are one of the few co-ops in the city that has units designed for visually or hearing impaired.

When I joined my first committee at Brewin, I met a woman who was terrified at the thought of getting up to speak in front of a room of people. Since then, in the course of five years, she has joined our board of directors and regularly addresses our members meetings with complete confidence.

Last spring I went to a funeral for one of our members, surrounded by other people of our co-op. A member of our community had died and we were there to mourn his passing.

At the last provincial election, I helped a developmentally challenged young woman vote for the first time because the process previously intimidated her. She left that polling station with a confident smile on her face.

These are just random examples of what grows from a community of co-op members. The Brewin community has a direct impact on our lives whether its providing a safe place for a woman coming from an abusive environment or instilling a sense of accomplishment to a young woman voting for the first time. Its benefits are incalculable in enriching our members' lives and those of the greater community at large.

It has been the express purpose of our board and staff to be inclusive and provide safe affordable housing for vulnerable people. We have agreements with social agencies to provide housing for abused women, people living with HIV/AIDS, and the developmentally challenged. Any new members are made aware of our community and educated about how it works. It is a community that has obvious demands that are met by a committed and sensitive board and staff.

We have several committees that range from the pragmatic duties of gardening and night-time security to community builders like the social committee. Members take care of each other, and take pride in their home, helping in its maintenance both physically and spiritually.

What struck me about first moving into Brewin almost six years ago was that it was like no other building I had lived in in the past. We are self-governed. I know a request for something to be changed or fixed in the building is taken seriously and done. I see members participating by coming to meetings, volunteering in the office, planting flowers or helping neighbors with groceries. With the investment of time and energy came a genuine concern for our home, and further still, a sense of pride in our home, not to mention the fiscal responsibility of members doing work as opposed to hiring outside contractors.

The vision statement of Brewin Co-op states, "Our goal is to provide ongoing education and training for our members—our human resources—so they can play an active part in the management of the co-op, take advantage of their rights as citizens and realize their own potential. We recognize the building we live in requires care and attention as well—a community resource which must be wisely tended to serve our needs and those of future residents."

A copy of our vision statement has been attached.
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Bill 128 puts all our community's hard work in jeopardy, in particular, taking away the administration of RGI, rent geared to income, and handing it over to one large body. The sensitivity of the issue of personal income, coupled with the unique circumstances of individuals in our community, would be seriously undermined by a cookie-cutter, anonymous municipal office's decisions. Why replace a system that already works quite well as it is? Only a knowledgeable and interested man-

ager such as ours can best serve the needs of the individuals at Brewin in this regard.

We at Brewin are also opposed to legislation that will take away our self-government, including administration and budget planning. The co-operative housing movement has a long history in this province, with a solid base of support mechanisms to ensure a viable housing option for lower-income people. Handing over the administration to an already overburdened municipality can only result in a great loss of service and financial instability. Leave the administration in the already capable hands of the members, boards, staffs and the co-op housing support sector. It's only common sense, a phrase many of us in this room are familiar with.

Brewin, and indeed all city of Toronto co-ops, fully endorses all the recommendations made by CHF Ontario to Bill 128, a copy of which has been submitted to the committee. We ask that you give them serious consideration when you deliberate over this bill. We are witnessing an erosion of many social services in our province, placing vulnerable people at even more risk. Housing is a human right. The members at Brewin co-op believe that co-operative housing is an effective, reliable and vital part of our society. We hope the committee will see the wisdom in its existence and seriously consider the amendments to Bill 128 proposed by the co-op housing sector. Thank you.

The Chair: Thank you very much, Mr Du Maresq. There's time for about one question each.

Mr Marchese: Thank you for your submission. I'm not as optimistic about your last sentence, "We hope the committee will see the wisdom in its existence." I wish I could say that was the case. One of the exciting things and one of the most efficient things that you do as co-ops is that you manage your own affairs. My fear is that these folks just don't understand what you people do. Do you get that sense too?

Mr Du Maresq: I would extend an open invitation to any members of the committee to come and visit our co-op. It's only about a 10-minute walk from here. You could come on your lunch hour. Seriously, we've had other politicians. We welcome it. I'm chair of the political action committee and I invite anyone who would like to come and pay us a visit and speak with some of our members if you would like more exposure or just more knowledge about a co-op in the city. I can give the number to the clerk.

Mr George Smitherman (Toronto Centre-Rosedale): Michael, welcome to the committee. I had the opportunity to attend the official opening five years ago with Barbara Hall. I wanted to ask you a question about community, but you've covered off in a rather compelling way the extent to which members go to take care of one another.

The riding we both call home is home to a variety of thousands of units of public and social housing. I had the opportunity recently to canvass in Regent Park, which is owned and managed by MTHA, and I found countless empty units. I'm wondering if you can comment, because

I think that might be the only thing that appeals to these guys, in terms of the management practices there. What has been the policy around vacancy rates? How have you managed those?

Mr Du Maresq: We take that very seriously. We have a very diligent manager and board who are very conscious of that. I can say that as a former board member of Brewin housing co-op. There was an example of that and we do try to stay on top of that, and we thankfully have a very good manager who is good at seeking that out and making sure it's taken care of.

The Chair: Thank you very much, Mr Du Maresq.

CO-OPERATIVE HOUSING FEDERATION OF CANADA

The Chair: The next presenters are Joyce Morris and Dale Reagan from the Co-operative Housing Federation of Canada.

Ms Joyce Morris: Thank you for the opportunity to speak today about our concerns regarding Bill 128, the Social Housing Reform Act. My name is Joyce Morris and I am the president of the Ontario council of the Co-operative Housing Federation of Canada. With me is Dale Reagan, managing director of our Ontario region office. A number of our members are here, as you've noticed, to witness these proceedings. We have a written report for the committee, that's the rather large book in front of you, which includes my presentation, a more complete brief, a set of our recommendations around the bill and of course an interesting stack of letters from our members.

About 21,000 co-op households across Ontario are directly affected by this bill. These co-ops provide a good home to more than 55,000 men, women and children. Our members have three grave concerns about Bill 128.

First, more bureaucracy and less autonomy for housing co-ops: Bill 128 cancels hundreds of long-term contracts between housing co-ops and the provincial government. It shifts housing programs from one provincial administration to 47 municipal service managers. It adds more layers of administration. It takes away services that co-ops have provided well and sensitively to our members and hands them to government to deliver through centralized bureaucracies. And far from giving co-ops the business independence promised, it gives governments more power.

Second, continued financial uncertainties for co-ops: The funding model has flaws that need to be fixed. It taxes away operating surpluses of co-ops that budget and spend wisely. The formula for payment to municipalities is too aggressive, and the bill contains no measures to deal with underfunded capital reserves.

Third, no new housing: At a time when the province-wide housing crisis has reached desperate levels, this bill does nothing to create much-needed new affordable housing. It simply leaves the job to municipalities, which can't afford it. Co-op members do not support the policy behind this bill. We don't think social housing should be

downloaded to municipalities. We're not alone. Non-profit housing providers are opposed. The Association of Municipalities of Ontario and most municipal leaders are also against it. So is the business sector, such as the Toronto Board of Trade. Even experts appointed by the Ontario government, such as David Crombie, say that housing is a provincial responsibility. It's hard for us to find anyone who supports downloading.

However, we recognize that the government is committed to this legislation, but we have a warning: let's get it right at the onset or get ready for serious consequences down the line. In our brief we have listed a series of amendments to correct what we believe are the major flaws in the bill.

Bill 128 is no simple administrative transfer. There has never been legislation like this in the history of Canada. For the past three decades, every federal and provincial housing program has been based on the premise that the government and the community-based housing providers are partners in the delivery of affordable housing. The details of this partnership, including the rights and responsibilities of each party, are spelled out in legally binding contracts called operating agreements. Co-ops signed these agreements with the province in good faith. In turn, we expected that the government would honour its legal obligations.

Bill 128 tears up these operating agreements. Instead of a contract that we can rely on, housing co-ops have legislation, regulation and several additional layers of administration. The bill badly erodes the community-based model of social housing and hands service delivery in key areas over to the government.

Co-ops are proud of our record of success. For three decades we have been developing and managing affordable housing. We have created wonderful communities based on a common identity, mutual support and shared values. People want to live in our co-ops because they are great places to live. We are determined to protect our homes. We want to make sure that our co-ops remain strong, healthy and financially secure for years to come. Let me tell you, gentlemen, my grandchildren live in a co-op and I want their grandchildren to live in a co-op.

Our pride in our homes, and our determination to protect them, comes through clearly in the hundreds of letters that co-op members have written to this committee, to their MPPs and to the Honourable Tony Clement, Minister of Municipal Affairs and Housing in recent months.

Co-ops are remarkably successful but we're not content with the status quo. Since the early 1990s, co-ops have been urging the Ontario government to reform provincial housing programs.

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We want a more business-like relationship with government. We are prepared to make trade-offs to achieve our goals, including paying back more of the operating funding that we receive. But in exchange for taking on more responsibility, co-ops need reasonable assurance of

economic viability in the long-term and significant operating independence.

Bill 128 doesn't create a more business-like relationship. It adds more administration. And it fails to deliver the funding stability that co-ops are looking for as the bottom line of reform. The bill also falls far short of the commitments made by Minister Tony Clement. The minister has promised to "reduce government duplication and bureaucracy" and to create an "improved and more cost-effective social housing system" with "simplified administration." In a background paper, ministry officials have said that "providers would gain more autonomy." Bill 128 fails to deliver on these promises.

I would like to point out several areas of concern about Bill 128 and identify changes that are needed. Our brief has much more detail on these issues.

Our first broad area of concern is that the bill creates more bureaucracy and reduces co-op autonomy. Lots of concerns fall under this issue. Most fundamentally, the bill fails to recognize the role of co-ops and other housing providers as partners in the delivery of social housing with rights and responsibilities. We are asking for a clear recognition of the critical role of housing providers in the very first clause of 128.

Second, by cancelling co-op's operating agreements, the bill replaces a contract-based model with a system that relies on legislation, regulations and municipal rules, all of which can be changed whenever the government chooses. Co-ops have less operating certainty, faced always with the likelihood that more rules will follow and that the rules will be changed.

Co-ops want as many of the contractual commitments contained in our current operating agreements as possible to be enshrined in the legislation and not left to regulations. We're also asking you to delete section 89, which permits local standards to be set, along with provisions that allow local rules. If the bill does allow service managers to set any local rules, it must be amended to require them to consult fully with housing providers before setting or changing local rules. Our brief sets out the minimum amendments we consider necessary.

Co-ops are very concerned about plans for the Social Housing Services Corp. There is no need for this new body and layer of administration.

The province has decided to retain responsibility for two key functions: mortgage renewals and risk management. Several of the functions assigned to the corporation, such as group insurance and bulk purchasing, are already being done effectively by sector organizations.

The co-op and the non-profit sector groups have developed a credible plan to allow for the pooling of capital reserves of housing co-ops and non-profits and educate providers about capital reserve planning.

The benchmarking and best practices functions proposed for this corporation can be done by sector organizations. The province can take responsibility for the rental cost indices used in the funding formula.

Co-ops want you to delete the sections on the Social Housing Services Corp. Let sector organizations get on

with the job of serving their members, something we do very well. If you're not prepared to do this, we ask you to make the detailed changes we propose in our brief to limit the scope of this corporation.

We are also concerned that the bill allows excessive oversight and intrusion into co-op operations. The government and housing providers share the goal of streamlined administration. The bill, however, moves us in entirely the opposite direction. It creates excessive reporting requirements and open-ended power for service managers to interfere in the operations of providers. Our brief contains detailed recommendations on amendments to the bill. Note in particular, please, the amendments to sections 110 through 116.

We are concerned about planned changes to rent-geared-to-income programs. We believe the powers given to municipalities to set local rules will result in a patchwork of service levels. This bill needs to set out strong provincial standards that apply right across the province.

Our members and non-profit housing providers are alarmed by plans to move from cost-effective, on-site administration of RGI programs to delivery by government through municipal agencies. They believe it will add cost, reduce service to applicants and fundamentally change the face of our co-op and non-profit housing communities.

We are asking the committee to stop the shift of RGI administration from the community to municipal government. Municipalities should be required to prove that a government delivery model is more cost-effective and leads to better client service than on-site administration by housing providers. And the service manager should be required to consult with housing providers before making any changes to service delivery.

If municipalities do end up taking on delivery of RGI programs, business protection for co-ops must be built into this legislation. Decisions by municipalities about RGI assistance can have significant financial impact on co-ops. The rules must provide that co-ops will not be financially penalized as a result of decisions made by municipalities.

We appreciate the promises from the minister to protect the number of households being assisted and the current mandate of co-ops. The legislation, however, falls short of his goals. We are asking the committee to amend sections 93 and 94 to make it clear that existing levels of RGI and provider mandates are fully protected.

Section 65 requires the municipal service manager to set up waiting lists for RGI applicants. Our experience with the current, more limited coordinated access systems across this province runs from well run to badly flawed. We believe the legislation should be amended to say that the current rules about coordinated access will continue to apply.

Municipalities should be required to consult with providers about how to set up better local systems to improve access to affordable housing.

I also want to comment on concerns with the new funding model. The proposed funding formula transfers the full risk of cost increases to housing providers, but leaves them ill-equipped to manage that risk. Four elements of the funding model need to be reconsidered. The model requires that co-ops share operating surpluses with municipalities, even after making a mandatory payment.

Surpluses arise when a co-op manages its finances effectively. A model that forces co-ops to pay half of any surplus to municipalities encourages a use-it-or-lose-it approach to spending. We are asking the committee to delete provisions in subsection 98(10) and elsewhere on the sharing of surpluses. If you won't recommend this change, then allow co-ops to prudently use that surplus first to deal with accumulated deficits, liabilities carried over from the existing program, operating reserves or capital reserves before paying out a share to the municipality.

The formula for mandatory payments by co-ops to service managers is too tight. It assumes that the rate of increase in market rents is always greater than the rate of increase in operating costs. This is certainly not true today with rapidly escalating utility costs. We are asking the committee to amend the bill to build a small contingency into the way that formula works.

The new financial base for housing providers will be set using new benchmarks for operating costs and revenues established by the minister. Co-ops have faced a number of funding cuts over the past five years and there's nothing left to cut. The benchmarking process must not be a backdoor route to more cuts. Subsection 99(1) should be amended to make sure that housing providers are part of the process of establishing benchmarks and have the right of review and appeal.

The proposed funding model will only work in the long term if projects start out with adequate capital funding. When setting the new financial base, the province must make sure that providers have adequate capital reserves to meet their long-term replacement needs. The bill should require the province, in consultation with service managers and housing providers, to make sure that reserves are adequately funded before responsibility is transferred to municipalities.

And, finally, a few words about the critical need for new housing: Two years ago, the study *Where's Home* documented the province-wide housing crisis. Problems have grown much worse since then. We urge the provincial government to provide the housing funding and programs that Ontarians so desperately need and not download this responsibility to already cash-strapped local municipalities.

I thank you for the opportunity to present the views of our co-op members. We would be pleased to answer questions that you have.

The Chair: Thank you very much, Ms Morris. Unfortunately, we don't have time for questions because we are running so far behind. Thank you for your comprehensive presentation too.

1700

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair: Our next presenters are: Leah Casselman, Suzanne Kelly, Tim Hadwen and Jim Elliott of the Ontario Public Service Employees Union. Good afternoon.

Ms Leah Casselman: Good afternoon. My name is Leah Casselman. I'm president of the Ontario Public Service Employees Union. I want to thank you for this opportunity to present our views on Bill 128.

Suzanne Kelly is a housing worker and the president of OPSEU Local 592. Jim Elliott is a security officer and unit steward of the Housing Authority Officers Association, OPSEU Local 292. Both work for the Metro Toronto Housing Authority and are directly affected by Bill 128.

OPSEU represents more than 1,000 members who work in social housing. Each day they labour to ensure low-income tenants in this province have decent and safe social housing.

OPSEU members provide professional, technical and administrative support at the Ministry of Municipal Affairs and Housing and assistance to the Ontario Housing Corp. OPSEU represents the professional, administrative, clerical and security staff at the Metro Toronto Housing Authority. OPSEU members work in many non-profit housing providers in municipalities across the province.

The Minister of Municipal Affairs and Housing suggests that Bill 128, the Social Housing Reform Act, is a simple administrative transfer. This is not an administrative transfer. Bill 128 is an attack on the quality of life of low-income tenants. Bill 128 creates the conditions to ensure the privatization of one of our province's most important assets, our public housing.

If that's not enough, Bill 128 is a vicious attack on our members and their rights. Bill 128 rips up our collective agreements. Bill 128 takes away union representation and it wipes out more than 20 years of decent labour relations. Bill 128 is bad housing policy and is bad for the workers. Bill 128 should be withdrawn and the downloading reversed. Instead, the government should upload the province's public social housing stock back from the municipalities. The government should make a real commitment to ending the housing crisis in Ontario.

OPSEU is not alone in saying Bill 128 doesn't make sense. Tenants, co-ops, non-profit housing providers and many others are calling for the province to reverse the download. Take a hard look at the depth of the housing crisis.

Here is but one example from the hundreds of stories available. An OPSEU member called her local union office a couple of months ago. She recently had to leave an abusive relationship and was forced to leave her apartment. She was living in a shelter when she called our office. She works in a full-time job and has two

children. She needed affordable housing. She found long waiting lists and nothing affordable in her neighbourhood. Her kids could not continue to go to their school. She spent six long months staying with friends trying to find a decent and affordable unit to live in.

We hooked her up with the housing organizations. We represented her when her boss tried to discipline her because her concentration had been affected by the ordeal. Her life was in turmoil, thanks to the way this government deals with housing. The government has abdicated its role in providing decent and affordable housing. It stopped building social housing in 1995. Then it turned rent controls into the cash grab of the decade for landlords.

Next the download started with Bill 152. We said it in 1997, and we say it again today: downloading housing doesn't make sense, not even common sense. Social and public housing should not depend on the local property tax base. The shift puts a huge financial strain on municipalities. This strain led to direct threats of the privatization of 5,400 units of public housing in Toronto in 1998. Other housing programs and services are being tested for privatization as we speak. You called Bill 152 the act to improve services; we called it yet another gift to the private sector and a cutback on public housing.

OPSEU offices across Ontario are getting more calls from members every day who are searching for affordable housing. It's a growing phenomenon, thanks to this government's approach to housing. More and more working people are homeless or living on the edge, searching for affordable housing. Why repeat your mistakes with a policy headed in the wrong direction? And Bill 128 does just that. Why do you create and exacerbate a housing crisis?

Bill 128 will mean less public housing in the province because cash-strapped municipalities cannot afford the liability for capital repairs and upgrades in the older housing stock. You have forced municipalities to look for ways to cut corners and save costs. You have provided no new money for social housing in this bill. Municipalities simply cannot afford to carry social housing.

Bill 128 will force municipalities to further privatize public housing, and section 5 of the act gives them the power to do so. It will force municipalities to limit who gets into public housing. Municipalities will be able to set new rules on rent geared to income and the size of the units for low-income households. Bill 128 lets the minister set targeting plans. Where's the protection that the new plans must be based on current levels?

Bill 128 also has a direct impact on our members who work for the local housing authority. They were promised a smooth and seamless transfer. The government suggested that it was business as usual. The facts show otherwise.

Bill 128 will mean layoffs. As your government bails out of social housing, our members will be laid off. Our members at public housing authorities will be laid off as the services they provide are cut back and privatized.

The minister claims that Bill 128, section 51, protects the terms and conditions of our members when they transfer to the new employer. That is just simply wrong. In fact, Bill 128 says that new employers can change terms and conditions of employment as they see fit. Bill 128 could protect terms and conditions of work but it doesn't. You chose, instead, job instability and lower wages.

Under this law, our members lose the right to take their union with them. You ripped that away with Bill 7 and you've done it again with Bill 128.

You treat OPSEU crown employees differently. You consistently single them out and deny them the rights that other unionized workers enjoy. Employees in other sectors get to carry their union with them. You could have provided for successor rights in Bill 128. You did not.

Bill 128 also tells our members that they have a supposed choice, a popular word with the government these days. They can either quit or accept the transfer. In subsection 51(8), unionized employees are treated differently and are hit just for being union employees. First, if our members quit, Bill 128 denies them access to employment insurance, unlike non-union employees. Second, Bill 128 overrides their collective agreement and denies them termination pay as they leave the Ontario Public Service.

Bill 128 should give our members a real choice in the midst of this massive upheaval. They should have the same choices as the non-union employees, something I think the Minister of Labour was talking about a couple of weeks ago. They should have a choice to go with a severance package or to accept the transfer. The government should treat these loyal employees with the respect and professionalism they deserve.

Bill 128 claims to transfer our members' rights to severance pay under the Employment Standards Act, soon to be gutted, but at what rate of pay, when the new employer can change the terms and conditions of employment?

There are even more ways our members' rights are ripped up.

Bill 128 takes away their grievance procedure and ends any possible retroactive remedies on outstanding grievances. Their benefit plan is gone and transferred without negotiation. Their personnel files are transferred without consent.

Their pensions are moved to a different plan, with fewer benefits and entitlements, without any discussion or negotiation. One of our members has a seriously ill wife who needs daily medical attention. He is six months short of his eligibility for retirement benefits under the OPSEU pension plan. Bill 128 takes this away. He has paid for his benefits through his pension contributions. That's just plain stealing.

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Bill 128, as it is drafted, overrides the Pension Benefits Act so that other members would not be able to claim access to their benefits in the OPSEU plan.

The government has choices. You have choices every day. You can do what is right. You can take action to benefit all people, not just the rich with their tax cuts. That's what governments are supposed to do.

With Bill 128, you chose not to invest in new affordable housing. You could have consulted the front-line workers and tenants to develop a comprehensive approach to the housing crisis and to improve social housing. You chose not to. You must ask yourselves what will happen two to three years down the road. I believe the housing crisis will be worse because of your actions.

In the short term, you need to amend this legislation. Minister Clement said he was holding public hearings to get it right: two days, three hours each, only in Toronto. God, I hope he gets it right. These amendments are urgently needed. Our recommended amendments to fix these most glaring errors are attached at the back of our brief.

Even better, you could withdraw Bill 128 and begin a new direction for housing in Ontario and take your role seriously. You can start to solve the province-wide housing crisis, you can start to build housing, you can improve social housing programs, and you can respect the workers' collective agreements. You know what? You could even introduce new legislation called the "Respect the workers and end the housing crisis act." It's time to give people real options and not simply a \$200 cheque.

Thank you for this opportunity and we look forward to your questions.

The Chair: Thank you, Ms Casselman. Because of the time, there won't be time for questions, unfortunately.

CO-OPERATIVE HOUSING FEDERATION OF TORONTO

The Chair: The next speaker is Mr Tom Clement, Co-operative Housing Federation of Toronto. Good afternoon, Mr Clement. Please proceed.

Mr Tom Clement: Thank you for this opportunity. I thought I'd take a couple of moments and tell you about the Co-operative Housing Federation of Toronto, who we are and who we represent. The federation was founded in 1974, and we represent 163 co-ops in Toronto and York region. The people living in our housing co-ops total 45,000.

We've been involved over the years in the development of new co-ops. When there were housing programs, we developed 55 housing co-ops and 5,800 units. We were an organization that early in our history realized the importance of education for people living in non-profit housing and developed our education program starting way back in 1975. Today we offer approximately 80 workshops every year and we provide training to about 1,100 people.

We have set up a network and we work closely with the Co-operative Housing Federation of Canada and its Ontario region, and when a co-op has problems, we work to sort out those problems. If it's a federally funded co-

op, we work with Canada Mortgage, and if it's provincially funded, we work with the ministry. Our role is to help co-ops in difficulty and to ensure that they remain strong, vital, democratic communities.

Another part of our education program is in partnership with the Co-operative Housing Federation of Canada, and that's the production of educational materials. We've produced approximately 30 plain-language publications on virtually every subject imaginable. Whatever somebody would need to know about living in a housing co-op and how to manage it, we have produced it. It looks like we are about to be presented with another new publishing opportunity with this legislation.

We also work to do bulk buying so that our co-ops have cost-effective budgets. We assist them by running a program that helps them to buy paint, carpets, floor coverings. We work with credit unions to ensure good rates on chequing accounts and term deposits and also that co-ops can buy government bonds.

We also do bulk buying of gas, satellite television services, hardware supplies and appliances. In addition to that, we work with the seven other regional federations in Ontario to provide bulk buying across the province. We also work closely with CHF, which takes a lead in providing insurance services and has been doing so for a number of years.

In looking at the legislation, we want to be clear that we're here to add our voice in protest to the legislation. In general, we think the legislation is a bad idea. Downloading to the municipalities is going to create many problems in the future. We'd also like to mention at this time that in addition to the cost of administration, the cost of the creation of new housing will pretty much guarantee that more families will be facing homelessness in the coming years.

Over the past 15 years in Ontario, what we've witnessed is a merry-go-round of public policy when it comes to housing. There's been a constant change. We believed that we'd seen it all, but in looking over the legislation and taking a look at the Social Housing Services Corp, my view, the view of the federation and the view of the co-op housing sector is that we're creating an entire new level of bureaucracy, an unnecessary level.

There's reference to bulk purchasing as a possibility in the legislation, and I just want to go back and remind people that this is already done by co-op housing sector organizations. One of the most important features of the buying that we do is that, in addition to working across the province, we try as much as possible to work with local suppliers. In the case of financial services, we work with credit unions. In the case of buying paint or floor covering, we try to work with locations that have local retail outlets so there are jobs in the community. The insurance is provided by Co-operators, which has insurance offices across the province. To simply try to remove the bulk buying away from the sector organizations and away from the local community, we feel would be a big mistake.

We feel that there are ways that housing costs can be reduced, but we really need to take a look. If we're talking about doing some sort of more intense purchasing, what are we really talking about if we're looking at a central agency? If we were looking at the supplies for an average co-op in Toronto, you would probably be looking at a co-op spending of about \$40,000, most of which is already covered by our bulk buying programs. We're talking about a pretty small part of their budget. Is there more money to be saved? Maybe. We're not sure. We're trying to work on that. In trying to centralize the buying Ontario-wide, it's our feeling that the cost of centralization would far outstrip any savings, and this would only add to the cost.

The real savings—and I think the thing that the province has done very well—is in the mortgage. Any homeowner will tell you that the place to save money is in the mortgage and a better rate. This is why the mortgage market is so competitive. The better rate you get, the cheaper your cost. In a co-op or a non-profit, the mortgage forms an even bigger percentage of the cost of operating a building.

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The province has already done an excellent job, and if you look at a co-op or a non-profit that has a mortgage of \$10 million or \$11 million, the real place to save money is by reducing the mortgage costs. If the province can work to take 1% off the mortgage, we're looking at cutting \$89,000 out of the cost of operating that particular project. That's where the savings are. If the province is able to get 1.25%, we're looking at savings of \$110,000. So there are real savings to be made, but it's not in messing around and trying to centralize purchasing when often it can be done in the local area where it's already being done by the sector organizations.

I would urge this committee to limit the role of the Social Housing Services Corp and not create another level of bureaucracy. It's my feeling that the creation of this new level of bureaucracy, instead of cutting costs, would likely lead to an increase in costs.

The Chair: We have time perhaps for one question each, starting with the government side.

Mr Beaubien: Thank you very much for your presentation, Mr Clement. I certainly don't disagree with you when you mention that we've seen a merry-go-round of public policy over the years. I don't think anybody can refute that statement.

However, I just heard the member Mr Smitherman mention a while ago that while he was canvassing he saw, in the management of the Metro Toronto Housing Authority units, that there were quite a few vacancies. I've heard people presenting from the co-op side that they manage their units very responsibly, and I concur with that.

What would your opinion be with regard to the management of co-op housing, generally speaking, across the province? Do you think they're all managed responsibly?

Mr Clement: First of all, we're not public housing, and I think Mr Smitherman was speaking in reference to

Regent Park, where he canvassed. I believe that's in his riding. We're not public housing. We make no claims that every single co-op is perfectly managed, but what we do claim is that we've set up an infrastructure to assist in that management and that in general co-ops are very well managed. If there is a problem we work closely with the ministry, and in the future with the municipality, to solve those problems. But we wouldn't try to make the claim that everything is perfectly managed.

Mr Smitherman: Hi, Tom. Welcome. I rather wish that we were dealing with a piece of legislation that was designed to make our public housing look more like co-ops than what I fear we have before us, which is the opposite.

The words "self-governance" and "community" are used a lot. I have the advantage, I suppose, of having thousands of units of each in my riding: 5,500 co-op units, the largest concentration in the country.

Tom, I'd like to ask you: if there was one suggestion you could make to the government in terms of changing a part of the legislation that is before us to try and move them away from the watering down of the self-governance and community pieces, to try and preserve the best of what's there in terms of citizen and membership participation, what might it be?

Mr Clement: I think we need to be independent. We've been independent. We need to be able to manage our communities. Co-ops are fiercely independent—everyone knows that—and we need to have a clear agreement with whatever level of government to guarantee that we can be self-managed. If we have clear funding in place, then we'll take the responsibility to manage the co-ops, and when there are problems, we'll step in and help to solve those problems. That's what we feel we need to be independent. No matter how you cut it, there is a cost to operating any kind of housing. We have real costs and we need to have the funding in place to manage those co-ops.

Mr Marchese: Tom, as you can see, on an important bill like this we have two days, and opposition members are reduced to asking one question of the deputants. We used to get three or four weeks of hearings and now we're reduced to one day of hearings, and if we're lucky we get two. That's the level of democracy we're getting.

One of the problems I think we're having is that a lot of people just don't understand co-ops at all. I'd venture to say that if I hadn't lived in one, I probably would have been as ignorant as many. That's a sad thing, because what co-ops do is one of the most efficient things I've seen in terms of how you govern your own affairs. You manage yourselves as opposed to other people managing you.

The point of it is that you're saving government money. You're saving everybody money in terms of how you administer your own affairs. What do we do? How do we reach this government? Obviously, they chatted with you and you've been able to pass to them your model in terms of how efficient it is. Why is it that they don't listen or you haven't been able to reach them or

they haven't been able to reach you? What is the problem that we've got? What do we do?

Have we got a few minutes?

The Chair: You've got about one minute to tell him.

Mr Clement: The one-minute answer.

Mr Marchese: Reduced to one minute.

Mr Clement: I think, again, that if we can work with all the parties to ensure that co-ops are strong and independent, if we can avoid creating a new level of bureaucracy—creating a new level of bureaucracy I think goes against the current government's thinking. I think this would be as far as I can get in one minute and as far as we can get before the end of the year.

CITY OF TORONTO

The Chair: The next presenter is Councillor Brad Duguid, chair of the community services committee; and Phil Brown, general manager, shelter, housing and support division for the city of Toronto. Good afternoon. If I may be so bold as to extend my congratulations to my councillor.

Mr Brad Duguid: Thank you, Madam Chair. If I had recalled you were Chair of this committee, perhaps we could have met at the Real McCoy and just hashed this out between the two of us.

The Chair: That might have been a good idea.

Mr Duguid: It probably wouldn't have worked.

The Chair: I hope you're feeling better, by the way.

Mr Duguid: Good evening, members of the committee. I'm here today as the councillor for Scarborough Centre, and primarily as the past chair of the city's community services committee, to address you today and make some remarks on the positions council has adopted on housing devolution in anticipation of this bill. I am joined today by Phil Brown. He's the general manager of the shelter, housing and support division. Kathleen Blinkhorn is with us this evening as well. She's the project manager for social housing.

You may be noticing that this is not my usual voice. I'm suffering from a little of bronchitis that I gained in the last few days in the municipal election. If by chance I start coughing and can't make it through my submission, I'm sure that Mr Brown will be able to ably carry on.

The city of Toronto has a wide range of observations on Bill 128 and its implications for Ontario municipalities. As one of 47 service managers across Ontario, we share common concerns about the bill with other municipalities. We also have concerns that are specific to the city of Toronto.

Toronto has a unique portfolio of social housing. Once transferred, it will involve a gross budget approaching \$500 million annually, one of the biggest city services that we'll be providing, along with transit, police, and Ontario Works. The 95,000 units of social housing we'll be administering represent 37% of all social housing in Ontario. It also represents about 20% of all rental housing in the city of Toronto. That's all rental housing.

These units are run as well by more than 230 separate non-profit and co-operative housing providers.

Just to put it in perspective for those of you who may not be from Toronto, and even for those of you who are, the population residing in social housing in Toronto right now is about the equivalent of the population of the city of London. So it's an incredible amount of units for an incredible amount of people.

The public housing stock in the city is some of the oldest in the province and is indeed in need of repair. Our social housing has a greater proportion of rent-geared-to-income units and has relatively more units facing a gradual phasing out of the federal subsidy.

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Before getting into specific comments on the bill, I think it is important that I reiterate the city's position on the social housing transfer. We and other municipalities have repeatedly expressed concerns over the inadvisability, the lack of foresight and the inequity of putting social programs, including social housing, on to the property tax base. This is an ill-considered policy decision and a step that no other jurisdiction has taken. It is difficult to predict the future costs of such programs and the impact of the economic cycle.

The property tax system is not an appropriate tax base to deal with income redistribution programs. I know the government has heard this before and has indeed chosen to ignore it. I'm not here to whine about it, because I think we've heard enough of that too. But I think it is important that you are aware of what our original position on the downloading of social housing was and the fact that it still has not changed.

Bill 128 is very complex and unwieldy. The process for consultation on the bill is extremely short and we have yet to see the myriad of regulations that are a critical component of this transfer. With incomplete information and short timelines, municipalities really are unable to assess the full implications of the bill, particularly with regard to future financial risk. Yet in just over 40 days, we are going to be taking on ownership and management responsibility for public housing.

Many financial risks are associated with the transfer of social housing to the city. Many of them are really unknown and they are very difficult to predict. Some of the factors I'd like to discuss with you briefly here this evening are:

(1) Interest rates: we are starting from a point of historically low interest rates. We face the risk of rising mortgage interest rates at renewal and resulting subsidy increases. This can have an incredibly large financial impact when you look at the number of units that the province will be managing and will be owning. This could have an incredible financial impact on the property taxpayer. Will the province be there to help us out when that happens or will those costs fall on the backs of Toronto property taxpayers? We are not quite sure but we are very concerned about that.

(2) Subsidy pressure: we are concerned that subsidy requirements will rise over time as geared-to-income

rents inflate more slowly than operating costs. Again, will the province be there to assist us if this happens or will these costs again fall on to the backs of property taxpayers in Toronto? We are still not sure.

(3) The loss of the federal subsidy and expiry of the agreements: the prescribed multi-year phase-out of federal subsidy, especially related to the prescribed service level standards, will no doubt put pressure on us to make up the difference. By "us," I mean municipalities. Will the province be there to assist us when this happens or will those costs be a burden for the property taxpayers of Toronto?

(4) Greater Toronto area equalization: when we look at the risk of sharp changes of GTA assessment or provincial policy decisions to change the funding formula, again, we will be looking to the province to be there if that should happen. We are not sure whether they will be.

(5) Capital repairs: potential costs for capital repairs not covered by existing reserve funds or by capital budget levels in the subsidy envelope we inherit are of great concern to us. We will talk a little bit more about that in a minute. But will the province be there when these capital repairs come back to haunt us or will the costs fall on to the backs of Toronto taxpayers?

(6) The shift of liability: ongoing litigation and other legal claims associated with the public housing asset are being transferred to the local housing corporation. It looks as though the Toronto taxpayers may well be stuck with these liabilities unless the province is willing to step in and assist us with regard to those.

(7) Default: the risk of mortgage default is substantial and, more importantly, any unusual costs to prevent these defaults. Will the province be there to help us out when mortgages default or will those costs also fall on to the backs of Toronto property taxpayers?

Our concerns in these areas are not addressed in this bill. It's clear that the government, through this bill, appears to be passing a lot, if not all, of these future financial risks to the city. This is unacceptable, in our view, to the property taxpayers of Toronto.

After three years of paying for social housing, this bill will finally allow us some say for pay in the management and administration of social housing. We have been calling for this for some time. But it is a little disappointing to see that the province is still directly involved in most aspects of social housing management. The province still has a final say in almost everything we do. Even though the province will no longer pay for social housing and will no longer administer social housing on a day-to-day basis, the result will be likely be micromanagement by the province, diffused accountability and financial inefficiencies.

A case in point is the proposed Social Housing Services Corp. This new province-wide body has significant policy and operating responsibilities, yet the government's bill dictates the composition of the board of directors. The minister will appoint the first chair and CEO and all directors for the first three years. This doesn't seem to be getting the province out of social

housing. This seems to be imposing the provincial view on how things should be run even though they are no longer paying for a say in that view.

We strongly believe the proposed Social Housing Services Corp has the potential to be too intrusive, cumbersome, and costly. It's simply not needed in our view and should be removed from the bill. We believe municipal experience is such that we should be able to manage these areas and coordinate these areas of potential efficiencies with the other municipalities across the province much more effectively than, or as effectively as, such a body.

We also note that responsibility for mortgage renewals, a key cost-driver decision in social housing, remains with the ministry and is not transferred to the city. This does not make sense to us. We recommend that responsibility for mortgage renewals be transferred to those municipalities which request it.

I'd also like to turn to the roles and responsibilities in coordinated access to social housing. This is an important issue to the 61,400 households currently on the waiting list in Toronto. We have great reservations about requiring municipalities to set up and operate a coordinated access system for special-needs housing. As you know, not all special-needs housing is being transferred to municipalities. Dedicated special-needs housing remains at the provincial level. We ask why, if that's the case, we would set up an access system for only a small slice of special-needs housing which is being transferred to us. That doesn't make sense to us. We'd like the committee and the government to take a look at that. We strongly recommend that responsibility for access systems for all special needs-housing be kept at the provincial level.

There is much more in the government's bill that we believe would probably be more appropriately located in regulation. This is more of an administrative concern. But as municipalities gain experience in the management of the social housing portfolio, it would be unfortunate if the government's bill restricts their ability to grow and develop new opportunities or respond to challenges.

Just by way of example, the new funding formula for non-profits and co-ops is in the legislation. I wouldn't even try to explain the new funding formula to you. It is very complex. I haven't even got my head around it yet. It may well be a good idea and it may well be a good formula, but it is untested. If the formula does not work and needs to be revised, it would be a shame if it is stuck in legislation and you have to go through an entire legislative change to make that happen. It probably would be much more effective to be as a form in the regulations.

I'd now like to turn to the capital repair needs of the social housing stock. As I mentioned earlier, this is one of the biggest financial risks, in our view, to the city and probably one of our major concerns. The age of Toronto's public housing makes this a more immediate concern to us than perhaps to some of the other municipalities. City councillors in Toronto are often asked by their tenants—in fact, we are not asked; we are screamed

at by tenants about the poor state of repair of some of the social housing units in our city.

First, we don't know what the financial implications are. We don't know 20 years from now, over the course of the next 20 years, what the capital needs for our social housing in Toronto will be. We all have guesses, but we don't really have firm and fixed numbers. That's troublesome to us. We believe this is an important item and a costly item and something that we really should have some numbers on.

Madam Chair, I know that you're aware—we do have a fair amount of social housing in the part of the city that we both are privileged to represent. I know that you've been out yourself in those buildings on many occasions. When you and other members of committee see the provincial comments that the social housing stock is by and large in good shape, I know that many of you are going to give your heads a shake, because you know that it is not. You know that there are problems out there. You know, when you get out there and you talk to some of the tenants, that there are some major concerns out there on the condition of the rental housing stock across this city.

If the studies that have apparently been done are comprehensive and thorough and not just a small sample, there's no need for our city to replicate them, but we would like to see them.

Some time ago—it was last spring—I as chair of community services wrote to the minister and asked for this information, asked him for the condition of these buildings, and we're still waiting for the information. I don't mean to be critical, but I can't help but wonder what the government is trying to hide. Are we concerned that social housing stock repair requirements are a financial ticking time bomb? We can't help but think the government is passing it off to us, the city, knowing that at some point it's going to blow, and while Toronto taxpayers are picking the shrapnel from that explosion out of their backsides, the government will be out there talking about how great their surplus is. I can't help but think that is a potential happening down the road, and that is of great concern to us.

1740

When a homebuyer purchases an existing home, he or she hires a home inspector to take a look at it, and gets assessments done on it to make sure that if there are any foreseeable repairs in the future, they have the financial means to make those repairs and can prepare for that. In this case, we haven't seen that and haven't had that, and we can't help but feel somewhat blindsided by that.

We are also concerned that the government's bill explicitly states the province is not liable for the state of repair of the social housing stock to be transferred and is not liable to fix it. In the absence of further due diligence and inspections, we believe the province should retain liability for capital repair needs.

I know I'm running short on time, and I'll try to get through the rest of this as quickly as I can.

The province has emphasized the flexibility that Bill 128 supposedly provides to us with respect to the transfer

of housing authority employees and the possible implications for labour relations. I'm not going into the details of that too much now because I don't really have time to, but my brief outlines four concerns the city has with regard to the labour relations environment. It's very important that we do everything we can, before this transfer takes place, to try to correct some of the potential difficulties in that labour relations environment down the road. If we do not, we may impede some of the flexibility the city may have of trying to put in place the best possible structure to try to manage this transfer. So it's a very important point. I'm going over it very quickly because it's in the brief, and all members and the public will certainly have copies of that brief.

In conclusion, in my remarks I have identified some of the broader challenges facing the city of Toronto as we prepare to take on the transfer of the social housing stock. Our review of Bill 128 has left us uncertain as to what financial risks we are taking on in this important portfolio. We're quite concerned about the intrusive provincial role in the new framework. A rebalancing of the roles and responsibilities between the municipal and provincial levels of government is necessary before the bill is passed, so we have the necessary say for pay and full authority to manage the system.

We have eight essential points that we recommend this committee address, with respect, in considering this legislation:

(1) We must have some protection against serious future cost risks we face from factors such as mortgage interest rates, overall subsidy pressure and loss of federal subsidy over time.

(2) The Social Housing Services Corp will duplicate what municipalities can do or already do, and should be deleted from the bill.

(3) Responsibility for mortgage renewals should be transferred to those municipalities which request it.

(4) Responsibility for access systems for all special-needs housing should be kept at the provincial level.

(5) Various matters, notably the funding formula, should be written in the regulations and not the bill.

(6) We need to review in advance at the draft stage the many regulations which are a critical component of the transfer.

(7) We need adequate due diligence and building inspections, and the province should retain liability for capital repair needs—a very important one.

(8) We need an ability to have labour relations considerations not be the main factor driving our choice of options for municipal housing operations, and to be reimbursed for the labour-relations expenses we will incur due to the transfer.

It is unfortunate that the legislation had to come about at a time when municipal elections were going on. It did prevent us from going to council with the actual legislation in place and allowing members of council further input. However, we did have some discussions beforehand, and that's what I've really been able to discuss with you today. My discussions are based on some of our

previous resolutions in council. Despite the municipal election, members of council have been watching and paying close attention to what is going on with this legislation, because we recognize the very large impact it will have on our city.

We are committed to working with provincial staff to ensure this social housing transfer goes smoothly. However, in order for that to happen we respectfully request that committee members consider our recommendations and respond favourably to them.

The Chair: Thank you for your presentation. Unfortunately we don't have time for questions. We have one more delegation before we have to go and vote.

Mr Duguid: Thank you for taking the time.

TORONTO HOUSING CO INC

The Chair: The last presenters are John Metson, chair of the board, and Derek Ballantyne, chief executive officer of the Toronto Housing Co.

Dr John Metson: Thank you very much, Madam Chair. There's a bit of preamble in the handout, which I'll bypass, consistent with your time needs, and move on to say that the Toronto Housing Co has been building and managing social housing since 1954. Our chief executive officer, Mr Derek Ballantyne, is here. If you have that one, single question you need to ask, I'm sure we can manage that between the two of us.

We follow quite naturally on the presentation from the city of Toronto, because the city of Toronto is our shareholder. It is the single shareholder of the Toronto Housing Co, which has approximately 28,000 units.

I would like, on behalf of the company, to make comments on the lack of a comprehensive view of how the housing program will work, which is a concern in this bill presented so far; some features of the funding model, which I think you've heard consistently through the day; the limits on the ability to streamline all housing programs that the bill presents; problems with the proposed coordinated access for special needs, which is a very key issue; a contract between a service manager and the housing provider—the clarity and the need for that; the capital requirements for repairs and mandated updates that will naturally follow from this legislation; and the development of new stock and the redevelopment of new stock.

I make these comments in the context that we are pleased to see legislation that can help us as a co to provide the housing we are mandated to provide. We are facing an unknown. The legislation clearly lays out for us unknown, uncharted waters. It sets out a funding model, but it contains very large gaps that are yet to be covered in legislation.

The regulations are not drafted. How is it possible to judge the merits of the funding model without having a complete view of the legislation and regulations in context? We urge that the government take time to consult sufficiently with service managers and housing providers on the development of regulations, it being very important

for this kind of experience to be present at that table. Most critical is the development of the benchmarks—which obviously affect all of us very directly as providers in the province—that will establish the funding levels for housing providers for decades to come.

We understand the theory of the new funding model, and it should be workable, as I think it is similar to some past federal programs. However, the real test is in the implementation. There's a very limited time in which to get it right—I think I heard that comment from one of the previous speakers—and we need a process that ensures that all affected voices, particularly those of the funders and the delivery agents, are listened to and in fact heard.

In regard to the funding model, there are three sections of the legislation dealing with the funding model that we believe need change. The use of the operating surplus to cover the operating deficit: Toronto Housing Company has experience operating housing under almost all programs. This has demonstrated to us that it is not always possible to manage year to year within fixed budgets, and from time to time we end the year with an operating deficit. Those who are in business will understand that. This is normal for many businesses, both public and private. To cover such deficits we manage our affairs to generate a surplus in the next fiscal year or years. The proposed funding model does not allow for this, which is a big gap. We think this should be amended to allow that operating surpluses be used to cover any deficits, and then be shared with the funder.

1750

Secondly, the flat and declining market rents: the funding model is based on an assumption that rents will rise over time. Now, this is generally true, but it does not happen in all communities in the city, certainly not at the same time each and every year. The funding model needs to be amended to take into account such situations. Otherwise, housing providers will be put into a deficit on a formula- and calendar-driven basis, with no hope of being able to make up the funding shortfall with increased revenues.

When non-rental revenue declines: the funding model—and in the housing company we have significant non-rental property—is based on the assumption that non-rental revenues will increase at the same rate as residential rental revenues. This is not the case. For example, leasing commercial space generates much of the Toronto Housing Co non-rental revenues. This market, as we all know, is very volatile and there are often periods of falling revenues. The funding model must be changed to use a different approach in the calculation of non-rental revenue increase.

The limits on ability to streamline all housing programs, which is the intent, I suspect, of the bill: the legislation only changes the basis of the funding model and regulations in those programs in which there is a provincial interest. The legislation also contemplates a provider and a service manager voluntarily agreeing to put all programs into a single administrative framework. For the Toronto Housing Co, this would be a significant

benefit. However, the legislation and the enabling agreements with the federal government do not clearly specify that the housing-provider and the service manager can replace the myriad of complex reporting requirements with a simple, clear, accountability system. It seems to be missing, and without such a guarantee, much of the advantage in creating a single housing delivery framework is lost for Toronto and the Toronto Housing Co. It is possible that we will be forced to maintain seven accounting systems and reporting structures if this is left as it is.

The special needs access: the proposal to change the access system for tenants with special needs must be radically changed or removed from the legislation.

The service manager is required to ask the Toronto Housing Co and other housing providers to accept a tenant through a "lead agency" referral, without a guarantee that there would be support services for that special need. It may also severely limit our ability as a company to bring support services to tenants in situ—and you'll remember we have 63% who are seniors—who require such support as a result of age or infirmity because they have not been placed through a provincially mandated referral service.

Toronto Housing Co has a number of very vulnerable tenants with special needs, so it's very important that we take this into account. The Toronto Housing Co works with a number of community agencies to deliver supportive service and neither the Toronto Housing Co nor the service providers, and least of all these very vulnerable tenants, applicants and their families, want these arrangements terminated, nor can they afford that. Furthermore, it would be very costly.

The need for contracts between service managers and housing providers: the present legislation proposed terminates all current operating agreements. From the perspective of a board of directors, this creates an open-ended liability in some cases that can go on for years and years, 150 years or more. We propose that the act should require that the service manager and the provider establish in contractual form the requirements made of the housing provider, therefore the board's liability being limited by that contract. The contract should specify the commitment to deliver RGI units.

The Chair: Dr Metson, I'm going to have to ask you to either speed it up or cut it short a little because you've got about two minutes left.

Dr Metson: OK, thank you very much.

The contract should specify a commitment to that delivery and they should also build in a termination.

The capital requirements are very important. Toronto Housing Co buildings—I think the city spoke to the state

of repair, so it's very important that we have the facility and the flexibility within it to manage in a businesslike and cost-effective way the provision of the redevelopment or the repairing of buildings.

We have not received a proportionate amount for capital repairs in buildings, particularly in our older buildings. We need a capital reserve program that in fact takes care of this.

We must be empowered, with the housing providers and service managers, to determine the best way to sustain the level of rent-geared-to-income units and provide more affordable housing.

I won't speak to the condition of the buildings again. Perhaps there needs to be a special provision in Toronto, with this mass of housing, where we can take into account the need for the development and redevelopment of properties in whatever form is the most cost-effective way.

In addition, we need to have an amendment to the TPA which will extend the current social housing exemptions to housing built by corporations such as ours, which may not fit within the program but which is clearly destined for low-income households.

In conclusion, Madam Chair, the Toronto Housing Co provides good, affordable housing to over 39,000 tenants who would otherwise not be adequately housed. As a municipally owned company, the Toronto Housing Co's board of directors and staff are well aware of the requirements for public accountability for public funds. It is in favour of accountability but all too well aware of the unnecessary cost, and you've heard this before, of layers of reporting that do not achieve better accountability. As a housing provider we are held to a cost benchmark and a social and economic mandate in the public interest but also to a reporting standard of the public sector without adequate recognition of the cost. We are very interested in working with the municipal, provincial and federal governments to make any reform of the Social Housing Act, and the regulations attendant, to achieve the public good at the least possible cost.

Those are our points that we trust that you will build into your process and decisions. Thank you.

The Chair: Thank you very much, Dr Metson, for your submission. The meeting is adjourned.

Mr Caplan: On a point of order, Madam Chair: I was just wondering if you could help me. When is the time when we hear from anybody who is in favour of this legislation? Could you let us know?

The Chair: When the people phone in to be on this list, I have no idea if they're in favour or against.

The committee adjourned at 1758.

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**Standing committee on
justice and social policy**

Social Housing Reform Act, 2000

**Comité permanent de la
justice et des affaires sociales**

Loi de 2000 sur la réforme
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICYCOMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Tuesday 21 November 2000

Mardi 21 novembre 2000

*The committee met at 1544 in room 151.*SOCIAL HOUSING REFORM ACT, 2000
LOI DE 2000 SUR LA RÉFORME
DU LOGEMENT SOCIAL

Consideration of Bill 128, An Act respecting social housing / Projet de loi 128, Loi concernant le logement social.

The Chair (Ms Marilyn Mushinski): I'll call the meeting to order. Good afternoon, ladies and gentlemen. This is a meeting of the standing committee on justice and social policy to consider Bill 128, An Act respecting social housing.

Delegations have up to 20 minutes in which to address the committee. I regret that we are running a little behind schedule again because of delays in the House this afternoon. I will be very strict with my interpretation of your time limits. You may take the full 20 minutes for groups, 10 minutes for individuals, or you may have some time allocated for questions from committee members.

ONTARIO NON-PROFIT
HOUSING ASSOCIATION

The Chair: The first group to address us this afternoon is the Ontario Non-Profit Housing Association, Robin Campbell and Catherine Boucher. Good afternoon.

Ms Catherine Boucher: Good afternoon. Bonjour. My name is Catherine Boucher. I work in Ottawa in non-profit housing. I notice there are a couple of members here from our neck of the woods: Mr Guzzo and Mr Coburn.

Mr Garry J. Guzzo (Ottawa West-Nepean): Be nice to us.

Mr Rosario Marchese (Trinity-Spadina): If you're nice, it'll make a difference.

Ms Boucher: I hope so.

The Chair: The members of committee are cutting into your time, Ms Boucher.

Ms Boucher: They're cutting into my 20 minutes. I'll remind them of that.

I'm here on behalf of the Ontario Non-Profit Housing Association. We represent over 720 private and municipal non-profit corporations and over 90% of provincially administered units; that is, the units which the province is targeting with this legislation.

Our providers come from diverse communities and organizations including faith groups, service clubs and the ethnocultural community. I know that Mr Guzzo, for example, has two of our members in his riding: the Ottawa-Carleton immigrant social services non-profit and the Muslim non-profit. Our members are serving low- and moderate-income families, seniors, singles and many people with special needs.

I'm here today because our members and the quarter-million tenants who live in non-profit housing depend on a system that works. I want to preface my comments by saying that ONPHA did not support the devolution of social housing. We have noted publicly that we find this is a bad public policy.

We certainly share municipal concerns around the risk inherent with the capital requirements and the ongoing, and obviously more important, issue of new supply, which this legislation does not address and which we feel and know that municipalities will not be able to address on their own. We don't support overriding 35-year operating agreements that our members entered into in good faith, including all our volunteer board members.

Our deputation today is made difficult by the fact that many of the important details around this legislation will be contained in regulations which we have not yet seen.

Notwithstanding my above comments, the role of this committee is important, as this legislation will impact on every aspect of our operations. It speaks to a new funding model, new rules for providers around rent-geared-to-income tenants, ineligibility, financial testing and waiting list management and a new reporting and accountability framework.

Our members need a system that works, as do the service managers. We have tabled with you a brief and an appendix which goes into quite a level of detail around the amendments we are looking for. However, I'm going to highlight the most important areas today. In this legislation, possibly the most important point for us is the funding model which is imbedded in the legislation.

The minister said in tabling this legislation that he was looking for increased autonomy for the providers, funding predictability and streamlined accountability. I believe that our comments and suggestions will enhance those promises that the minister made in putting this legislation forward.

The funding model is to be a business-based model which indicates that rents and RGI subsidies would equal the expenses that the providers have. In order for the

financial model to work, we are looking for four key amendments. It is critical that the cost and revenue benchmarks be adequate. That is the basis of the funding model.

In order to achieve that, we believe that the legislation needs to ensure there is consultation with the providers, including individual reviews for each provider, as benchmarks vary from region to region and from provider to provider, with good reason.

1550

The other significant issue is that of having adequate capital reserves. I'm sure you will hear this both from service managers and providers. Our brief proposes that we look to the Condominium Act, which has pretty clear requirements for condominium managers regarding annual contributions and a regular update of reserve plans.

In order for a provider to operate in a businesslike environment, there has to be adequate working capital to address fluctuations in costs and revenues. This is prudent business planning and also was recommended as part of the funding model in the initial consultants' report on the funding model. Our proposal in terms of how to ensure that there is adequate working capital is to delete the requirement in the legislation for providers to return 50% of the surplus to the service manager.

We looked to the idea that was originally in the funding models by the consultants, which was that it would be prudent for providers to have a two-month operating cost reserve in their portfolio. We did a projection of what it would take under the proposed legislative funding model and we came up with a figure of 80 years that it would take a provider to accumulate a reserve of two months of operating costs. I think you would agree that any business would be prudent to have that kind of cushion to allow for the fact that there are always unpredictable things which can happen, such as a winter with high heating bills or a technical upgrade needed to provide more efficient business.

If this return of the surplus is not accepted, then our fallback position, which we hate to put forward because we don't like to have fallback positions, would be to apply a balance sheet approach to the surplus. That is, no surpluses would be returned to the service manager as long as there is a deficit on the books of the provider from previous years.

The fourth item which is crucial to having the funding model work is that it be adapted for regions with flat or declining market rents, because the funding model is based on an assumption of market rents going up. I know that rents two to three years ago, even in Ottawa-Carleton, with 5% vacancy rates, were actually staying flat or declining. The funding model needs to be adapted to account for that.

The hottest button for our members when we talk about this legislation is the issue of financial testing and access. This is the issue that speaks to our work that has to do with people. Yes, we are operating bricks and mortar, but people live in them. Those people are our

clients. The issue of RGI eligibility testing and waiting list management transferred to the service manager is possibly the one which resonates most dearly with our members.

We have all along said, and we believe that an analysis of the cost-benefit of having the service manager do this work instead of the provider will show in every case, that it is more efficient to have the provider continue to do this. We therefore ask that the legislation be amended to allow the service manager to simply delegate this to the providers through a notice rather than the more complicated suggestion in the current legislation.

We want to note here, as we've said on many occasions, on the issue of merging financial testing for social housing with Ontario Works and daycare, that only 16% of tenants who live in social housing are actually receiving Ontario Works and only 7% use subsidized daycare. So the overlap is really not significant.

The issue of rent collection must remain a provider responsibility; that is, we are the only legal entity which can deal with rent collection because under the Tenant Protection Act we have the responsibility of dealing with evicting tenants for nonpayment. This cannot be transferred over to another party. The legislation supposes that the service manager might impose other collection of fees to the tenant directly and then we would have to enforce that. We need to be sure that we receive adequate notice and that we're indemnified against any financial loss if there's negligence on the part of the service manager.

A very significant piece of the legislation which is of great concern to us is referred to in section 89 and it has to do with interference in our operations. Section 88 talks about the duties of providers regarding regulations and so on. Then section 89 has an open-ended clause which says it allows local standards to be set by the service managers. When we have spoken to ministry staff about this, they have not been able to tell us in what areas the service manager would be able to set local standards. I don't know what those could be. Does it mean a service manager could tell us how often we have to clear the snow? What is the level of a local standard? Without any detail in the legislation, this is extremely open-ended. So we want that amended to say that those standards would only apply to the areas of municipal flexibility which are named in the act and no others. We have suggested wording to that effect.

We also obviously want to be consulted in the areas of municipal flexibility. Our current agreements require the province to consult us, and we believe this benefits all parties and should be extended into the legislation so that the service managers would also consult with us.

The issue of supportive housing waiting lists and the management of waiting lists for special-needs housing is also of extreme concern to all of the providers. We understand the desire to have everybody who is eligible be aware of the resources in the community, but the solution proposed in the legislation will not work. There may be other solutions, but the interim solution is not

what is proposed, which is to make all the agreements that we currently have with special-needs agencies null and void at the time of devolution. If there is going to be a system of access, it has to be done in a coordinated fashion and involve everyone who is affected. In the meantime, the current agreements must be maintained in order for the people we serve to continue to have security of tenure and to receive the services they need.

We support the Social Housing Services Corp in the delivery of common services. We do not, however, support duplicating existing services, which include group purchasing. ONPHA has a best-deals program which our members use and which is a very good program. I believe the co-op sector has the same. We do not support that the training for providers be done out of the Social Housing Services Corp; it should be done by peers through their own associations. The best-practices system also should be operated by the social housing sector because it should be a peer support and peer review system, not an imposed system.

We also have been involved significantly in the last year in setting up an investment fund system along with the co-op housing federation. We've done a lot of work on this issue. The ministry has been looking at our proposal, and we believe the investment fund should be delivered through a sector-based organization and not through the Social Housing Services Corp.

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The issue of new supply is not addressed in this legislation but we would like this legislation to consider correcting an omission in the Tenant Protection Act which will allow providers who are struggling, as many of us are, to try and provide new supply to do that through having the exemption necessary to provide rent-geared-to-income housing in new supply. The current TPA does not permit that. That is, we cannot do rent-geared-to-income housing in a new building which is not covered under these programs, because the programs are named in the TPA. So we need to have an exemption to the TPA to allow us to use all of the programs that are out there, including the provincial rent sup program and RRAP and all of those municipal programs that are coming through in order for us to do some new supply.

The Chair: You have about two minutes.

Ms Boucher: That was my last overhead. Thank you. Merci.

The Chair: We have perhaps time for one question.

Mr David Caplan (Don Valley East): Ms Boucher and Ms Campbell, thank you very much for your presentation—very comprehensive.

You said that one of the hot buttons or the hottest button was RGI eligibility. I know that the minister has said, and I think even the parliamentary assistant and government backbenchers have said, in second reading debate and in other places, that the 30% threshold for rent-geared-to-income is protected in this legislation.

I've read all 117 pages of the legislation. The only reference I can find to that is subsection 164(1), "The Lieutenant Governor in Council may make regulations

respecting the following...." Under paragraph 8 it says, "For the purposes of subsection 66(2) (amount of geared-to-income rent), prescribing the standards to be used when determining the amount of geared-to-income rent payable by a household."

I haven't found any protection for the 30% threshold. So my question to you is, have you found it in this legislation?

Ms Boucher: I haven't found the number 30% in the legislation, no.

Mr Caplan: So, as far as you can tell, there are no guarantees?

The Chair: Those are all the questions. Thank you very much.

BETHANY CO-OPERATIVE HOMES

The Chair: The next presenter is Kim Weiman of Bethany Co-Operative Homes. You have 10 minutes. Good afternoon.

Ms Kim Weiman: Madam Chair and committee members, it's a great honour and privilege to have the opportunity to share the concerns of Bethany Co-operative with you today. My name is Kim Weiman and I would like to introduce you to Joan Cyr, who is our president, Judy Ormerod, who's our treasurer, and Dayle Yardley, who is the coordinator at the co-op.

I hope that you will consider the concerns I address today and begin the implementation of recommended amendments to the legislation over the next week. Thousands of co-operative members across Ontario are counting on you to uphold the communities in which they have lived for many years.

Bethany Co-operative is located in Keswick, about one hour north of Toronto. We are a 68-unit townhouse-apartment complex with 98 members and 92 children. All of our members at Bethany are concerned about the future of our communities. They have asked me to speak with you today, simply to request that you listen to our concerns and take them into consideration.

As you heard yesterday, and I am sure you will hear today, sections of Bill 128 threaten our communities and the structure of management that we are accustomed to. Bill 128 moves the administration of social housing from one provincial administrator to 47 municipal service managers. The legislation that has been adopted will make it difficult for co-ops to continue to operate as unique corporations. We have always viewed co-operatives as a business. We are professionals. We hire professional staff to manage the daily operations of our co-operatives. Our management records stand for themselves. We are fiscally responsible business people.

Co-operative communities are very different from social housing developments. Our communities are member driven. Our members elect a board of directors who are members of the co-operative. These individuals have a vested interest in how the business is managed. This is their home.

You should have received letters from members of our co-operative and you will also have received additional submissions from the membership of Ontario.

This is a community in which they have lived, raised their children and hope to share with their grandchildren. Our members are counting on you to listen and make the necessary changes before it's too late.

As things stand right now, the legislation has passed second reading. We have found that the legislation allows for a great deal of interpretation or establishment of prescribed requirements. The prescribed requirements are unnerving. Forty-seven municipalities are going to establish their own rules and regulations and 47 municipalities are going to make mistakes. We have gone from a handful of provincial operating agreements to 47 prescribed interpretations. This concerns the members of the co-operative because the rules of housing are going to change throughout the province. As much as possible, we would ask that provincial standards be established rather than allowing service managers to set rules and regulations.

It is felt that each municipality will establish regulations which meet their individual municipal objectives or mandates. This may not be in the best interest of housing longevity. Please acknowledge that housing providers as well as the municipalities have an interest in the municipal housing stock. Please accept CHF Ontario's recommendations in a multitude of clauses and consult with co-operatives in Ontario about the prescribed requirements that will be incorporated into regulations.

Section 65 of the legislation discusses waiting lists for units. Bethany Co-operative has an extensive waiting list. Many co-operatives have families who have been waiting for rent-geared-to-income assistance for years. It would seem unfair to bump those individuals for new lists as they are created. We would request that you add a subsection to section 65 reading: "Where a housing provider has maintained its own waiting list or lists as permitted or required under an operating agreement, the housing provider may continue to fill vacancies from such lists until they are exhausted."

The co-operative housing sector does not fall under the Landlord and Tenant Act. We fall under the Co-operative Corporations Act. We do not have tenants; we select members. Living in a co-operative presents unique opportunities for members: control over one's housing situation according to the rules of democracy, participation in a supportive community and mutual security. This is the type of community in which members choose to live.

Volunteers from our co-operatives interview applicants for membership. Co-operative living is not just a roof over your head, it's a way of life. It is important that applicants understand the participation element as well as the commitment to the larger community. It is also important that applicants and members remember that the co-operative is a business. We are a business. Allow us to do what we do best. Allow us to build communities around diverse groups of people.

Co-operatives are well managed because they are managed and maintained by their members. Members have a vested interest in the homes in which they live. They care about the common areas, and how their units are maintained. Co-operatives give their members a sense of pride in ownership. Co-operative members are fiscally responsible. Subsection 98(2) "E" speaks to a surplus or deficit. At Bethany Co-operative, we have 11 active committees assisting in the day-to-day management of the co-operative.

Our operating costs are reduced because our members cut the grass, they paint units, they mop and wax floors, and they do it with pride. As a result of their hard work, sometimes we see a surplus at the end of the year. We at Bethany Co-operative feel that this hard work is the key to our future. We want to add any surplus to our replacement reserves in order to adequately provide for our future. Cost constraints and increases in municipal taxes in the past few years have ensured that any surplus would be minimal. Allow the surplus to remain with the members who work so hard to earn it.

Please consider amending subsection 98(2) "E". Please add the following subsection:

"A surplus to be shared with a service manager is a surplus that remains after:

"payment to accumulated deficits;

"funding of operating reserves equal to two months of operating expenses; and

"additional contributions to capital reserves."

As we were reading through the legislation, it was becoming increasingly frustrating to realize that housing as we know it is going to change. We have always taken pride in treating all of our members exactly the same. We took pride in the fact that individuals did not know who was on subsidy and who made market housing charge payments.

We are concerned about the consideration of rent-geared-to-income calculations being performed at the municipal level. Some 75% of the members at Bethany require RGI assistance. Approximately 8% of that 75% receive Ontario Works assistance. The balance are working families, most of which do not require daycare subsidies. These individuals may be required to report to the region that operates from 9 to 5. The accessibility to the regional office will be a barrier to the working class. In most co-operatives, we have office hours which include an evening. This allows all of our members access to the office and the coordinator should they need it.

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Our internal infrastructure is critical to the community development of our co-ops and without that, our uniqueness will be jeopardized. The region is not going to provide this service to our members. Keswick is located about 30 minutes north of Newmarket. Members will be required to travel to Newmarket to the regional office. Most of our members do not have vehicles. Transportation and the cost of travel are going to represent huge barriers to these individuals. Please consider an addition to subsection 71, which would read as follows:

"Service manager is required to consult with housing providers on the administration of RGI programs. Administration of RGI programs shall remain with housing providers until service manager sets out a business case including cost and client services for moving to offsite administration."

Recently, York region released a community services and housing guide. We provided a copy of the section I am referring to. I was hurt and strongly opposed to the definition of social housing. I quote: "The housing and residential services division administers social housing programs which provide suitable, affordable housing for people whose income, age, social or health needs prevent them from finding adequate housing in the private rental market."

This may very well be the definition of regional or municipal housing, but it does not define co-operative housing. I chose to become a member of a co-operative not because I could not find adequate housing in the private rental market, but because I wanted to live in a community in which my voice mattered, a community in which I could learn, share and make a difference. I resent the implication that I only chose to live in a co-operative because I was unable to find housing elsewhere. It concerns me and other co-operative members that York region has defined us without taking our unique characteristics into consideration.

I would like to thank you on behalf of Bethany Co-operative for providing us with this opportunity to express our concerns. I hope that you will take our concerns and the recommendations of CHF Ontario region into consideration over the next week.

The structure of a house protects, but the spirit of a house makes it home. Please be aware of our unique spirit and our desire to provide exceptional, not adequate, housing to our members. Housing is a business and we do it very well.

The Chair: Thank you very much, Ms Weiman.

GUHBAWIN CO-OPERATIVE HOMES

The Chair: The next presenters are Lori-Anne Gagne and John Moore of Guhbawin Co-operative Homes. You have 10 minutes.

Mr John Moore: Thank you, Madam Chair. I'd like to take the opportunity to introduce the people who are here with me: Sherry Guppy, Lori-Anne Gagne and Lisa McKay. My name is John Moore and I'd like to thank you for the opportunity to present today. I've lived in co-operative housing for over five years. I'm here today representing the Guhbawin Co-operative Homes. Guhbawin is a 9-year-old, well-respected 50-unit provincial co-op located in Sudbury, Ontario.

During my time at Guhbawin, I've had an opportunity to do a number of different things. I've served as the president of the co-op, I have served as a board member at large and I've had the chance to serve on the maintenance committee. It's been a pleasure to serve there because my family received so much from living in a co-

op. We've gotten decent, affordable housing that's given us the opportunity, both me and my wife, to return to school, re-educate ourselves at university, get decent jobs and very shortly we're going to buy a home and move out of the co-op. We wouldn't have had that opportunity had Guhbawin not been there for us.

Members of the Guhbawin co-op have asked that I speak to you about two of our main concerns regarding Bill 128. These concerns pertain to the funding model and the method of RGI administration proposed in the bill. Although our concerns seem to be related to those of the entire co-operative community, I would like to give you the specific northern Ontario and more specifically Guhbawin's perspective on those issues.

I'll start with the funding model. Our biggest concern with the funding model is that co-ops will be forced to share half of any operating surplus with municipalities, even if they have an accumulated deficit. Guhbawin does have an accumulated deficit. Our deficit is not a result of overspending or poor management. In fact, our manageable costs are far lower than the majority of our sister co-ops. The deficit resulted from a stagnant rental market in northern Ontario, which caused a huge gap in our bridge and RGI subsidies as well as substantial vacancy loss when we couldn't rent our units because they were just too expensive.

Guhbawin has successfully renegotiated a fairer budget base with the ministry and has a five-year deficit reduction plan in place. Guhbawin plans to operate at a \$10,000 per year surplus for five years. We have met our goals over the last two years and have three more years to go. This is a real goal, in the truest sense, for our members. They strive to manage effectively so that we can have a surplus at the end of the year to apply to our accumulated deficit, thereby ensuring that Guhbawin will be able to provide decent, safe and affordable housing for many years to come.

When our members heard that with Bill 128, we would now have to share that surplus, our three remaining years then became six. You can imagine our members' disappointment and discouragement. Their motivation has been substantially crushed.

This emphasizes what we have said all along, that this section of Bill 128 promotes a use-it-or-lose-it mentality and does not promote effective management.

To close this section, I would like to bring you back to the fact that Guhbawin is a northern Ontario co-op. In 1995-1996, we had a record-setting-cold winter season. The heating costs and snow removal costs for co-ops in northern Ontario that year well exceeded most budgeted amounts. Just for an example, yesterday, Sudbury had 40 centimetres. You can't predict that. You don't know if that's going to happen when you set your budget or not.

The 1995-1996 costs caused several co-ops to incur slight deficits in that operating year. However, we have always had the flexibility to examine our upcoming year's budget and ensure that this deficit could be quickly made up. With Bill 128, we no longer have this flexibility. You want half of our surpluses, but you're not willing to share in half of our deficits.

Guhbawin is asking that you please consider amending this section so that the sharing of surpluses is done on an accumulated basis so that all parties involved, provider and government, are looking at the big picture and not just one year at a time.

The second major concern pertains to RGI administration. Bill 128 states that the municipalities can centralize all or part of RGI services and integrate it with other social services, such as Ontario Works or with childcare.

It's our understanding that this option was included based on the assumption that the majority of our members who receive rent-geared-to-income assistance are also on Ontario Works. That's simply not the case. In our co-op, 25% of our members who receive a subsidy are on Ontario Works, 10 out of 37 members, as a matter of fact; 19% of them are people who would be categorized as the working poor; 5% are senior citizens.

It will create a much more difficult system for our seniors to have to travel to the local Ontario Works office to have their housing charges calculated. Guhbawin's office is located on site and it is still convenient for seniors to provide their information even when they are ill. I'm sure that many of you have seen local Ontario Works offices. You've seen the indestructible chairs, you've seen the Plexiglas. Would you send your mother there? I wouldn't want to send my mother there.

Those whom we call the working poor will now have to take time off to go to the social services office. Guhbawin co-op is open one evening per week to accommodate our members so that they don't have to miss any time from work to bring in financial information. Can you tell us that Ontario Works offices are going to be so flexible?

When you consider that co-ops have successfully administered RGI programs for more than 30 years, we strongly believe that onsite administration is the best and most sensitive way to deliver this service to members.

We urge you to make sure that no changes be made to the income-testing system without a business case that looks at both cost and client service and can truly prove that a change would be beneficial.

I would ask you to please take the time to read the written brief that we've provided to you. It's only five pages; it won't take you very long. More detailed information, including the proposed amendments that we would like to see made to Bill 128, is included in that brief.

In closing, I would like to express Guhbawin's support for the many points raised by our co-operative housing colleagues. Guhbawin has limited its presentation to only two points due to time restraints and not due to a lack of interest in other portions of the bill. I would like to thank you for your time and encourage you all to read the written portion of our presentation.

Do you have any questions?

The Chair: Thank you, Mr Moore. There's probably time for one question.

Mr Marchese: Thank you for coming. As you can see, some deputants are lucky to be able to get a question

in, answered at least. We only had two days of hearings; this is an important bill and the sad thing is that it's not just happening with this bill, but it's happening with many bills.

What you've raised, of course, many other people have raised. What you have said, as co-ops and many others, is that you do things very efficiently. It's wonderful that you can manage your own affairs and because you do that, as the previous group said—because people paint their own units and they mop and wax floors and do it with pride—sometimes you have a surplus. If you do that efficiently, they're going to take it away from you, is the suggestion.

You're obviously arguing that to take it away would be largely inefficient, aren't you; and you are hoping these members will listen to you, aren't you?

Mr Moore: Yes.

Mr Marchese: Perhaps you can make an appeal to the members that they will listen; they often do not in many of the hearings that we have. Perhaps you might make that appeal.

Mr Moore: I'm sure this government builds most things upon a business case and on sound business principles. It only makes sense that if you tell an employee to work harder, to make more profit for your company, and that you're going to pay him less, he is not going to work as hard. I think that's a pretty simple argument.

I realize municipalities would like to reap the benefits of possibly gaining additional revenues through the downloading of social housing. In theory it might sound like a good idea, but in principle I don't know how well it's going to work. I hope you give that some consideration.

The Chair: Thank you very much, Mr Moore.

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REGIONAL MUNICIPALITY OF YORK

The Chair: The next delegation is Alan Wells from the regional municipality of York. You have 20 minutes.

Mr Alan Wells: Good afternoon, Madam Chair and members. I'm joined by Sylvia Patterson, who's our director of housing services at York region.

It's a pleasure for me to be here representing our municipality. I'm the chief administrative officer. I've formerly been commissioner of community services and general manager of housing, so I have a degree of understanding of the matter.

I am very pleased to see Bill 128 proceeding and a schedule established for the transfer of social housing. As a member of the municipal reference group for this transfer, I am particularly pleased to see that the legislation addresses many of the concerns identified by the CMSMs. Those are the 47 municipalities and the combination of municipalities which are now responsible for this service.

I would also like to extend our appreciation to the ministry for its continued effort to work in partnership with municipalities in the development of this transfer.

The province will continue to be an important partner in supporting and protecting the social housing system across Ontario by establishing performance standards and working with municipalities to minimize the financial exposure of municipal taxpayers. This transfer must not be just about ensuring the long-term stability of existing housing programs, but must also support municipalities in meeting the growing housing needs of our communities.

Bill 128, as proposed, provides a framework for social housing reform and the new relationship between the province, providers and the CMSMs. Many of the details will be articulated in the regulations, which are still to be made available. It is these details which will ultimately guide the development of programs administered by CMSMs. Obviously we're interested and anxious to see those regulations.

It has been very important that there be ongoing dialogue between the CMSMs and the province as the regulations are developed. We have appreciated the opportunity to work with the ministry through the development of the legislation and we look forward to continuing to do so through the development of the regulations and supporting material. We would ask the ministry to continue to support CMSMs in developing local approaches to program administration and to ensure the regulations provide the flexibility needed to do so.

Recently, the province has indicated several ways in which they will assist in managing the risks of the social housing program, including centralized mortgage administration, retaining environmental liability on public housing, transferring the \$58 million in federal funding for capital issues, 100% guaranteed flow of provincial funds through to the CMSMs and confirming the CMSMs' power to deal with projects in difficulty. However, it remains a significant financial risk for CMSMs in assuming responsibility for social housing. For CMSMs in the GTA, which I'm part of, these risks are magnified by the pooling of social housing costs. CMSMs are accountable and will plan to manage costs and risks within a reasonable framework. There is a need for commitment by the province to establish a limit on the overall risk of the social housing program.

There has been significant discussion among regional CAOs with respect to the risks associated with this transfer. In that regard, I've attached as a supplementary report of the Regional CAOs of Ontario. It's a staff report. It hasn't been before our councils because we've just had an election and our councils haven't met, but it reflects the combined knowledge of that group. That summary outlines the potential for both transitional and long-term costs to significantly impact on the local taxpayers.

I would like to add at this point that it was the municipal group which asked that the surpluses be shared. That was a comment made by the two preceding presenters. We did that to ensure there's fairness in the best use of the total funds within our area and to ensure that surplus funds are available to all providers in the event of

unforeseen issues and extraordinary costs. That's part of the sharing of the risks program we put forward.

We're really concerned with stability on issues like mortgage rates, the unfunded capital costs and replacement reserves, transitional costs, which we really don't have a handle on, and the overall fiscal exposure for things like rising fuel and those sorts of things. The risks are now all in our court.

We understand that the Social Housing Services Corp arose out of a concern that there was a need, at least on a transitional basis, to support smaller CMSMs in ensuring cost-effective coordination of some services to the social housing system. However, the legislation as proposed does not provide the flexibility needed to both respect the capacity of CMSMs and allow the social housing system to mature. We think this organization would be very beneficial and helpful in coordinating and managing the replacement reserve funds, and we suggest that be the only mandatory portion of it.

We suggest that, through dialogue with the CMSMs, if there are other items that municipalities want to use that vehicle for, especially the small municipalities, such as joint purchasing and insurance requirements, that that be available. However, the larger municipalities are already doing this. We're already doing these functions in relation to our total municipal expenditures, which are close to \$1 billion, and in particular with our own housing corporation. So this is not a new business to us. However, it would be helpful for small municipalities. Insofar as benchmarking, our group, the CAOs of Ontario, has established the benchmarking best practices forum. We think we have the capability, along with our colleagues in AMO, to implement that without having it being enshrined in a private corporation.

As a minimum, we would propose that the legislation provide the opportunity for review after three years to see if the mandate is being met, needs review, needs changing, or if in fact we would be mature enough by then to have it completely eliminated.

The province has provided CMSMs with a number of tools to maintain and protect social housing over the long term. One of the most important is the minister's commitment to the 100% flow-through of federal dollars. We understand that the province will be managing the distribution of that funding. It's proposed that GTA pooling payments be managed through that process. It is paramount to both the region of York and the other GTA members that this process be transparent and auditable to ensure that we meet the needs of our citizens for accountability of public funds. I just want to let you know that although we share, between social housing and social services, \$80 million raised in York region to supplement Toronto, we too have program needs in York region, and that money could well be used so that we can catch up with our increased needs. We have to ensure that it's well used and appropriately used.

There is no doubt that province-wide standards are required to ensure consistency in the delivery of social housing, but these same standards must also be flexible

enough to allow for local discretion in appropriate program areas to address the variety of situations that exist across the province. As municipalities, we strongly support performance measurement and work to ensure that best practices are put in place in all of our business areas as a key part of our mandate. We are pleased to support the implementation of benchmarking and best practices within the social housing program.

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We applaud the province on its work on integrated income testing thus far, but await the details of the regulation in order to assess the opportunities and challenges for implementation. York region is ready to take integration of human services to a new level in a well-coordinated effort. We look forward to the support of the province in developing guidelines that will support that work.

I'd like to say, in listening to the two preceding speakers and particularly the one who addressed issues in York region, that we don't propose to model our responsibilities in social housing as an add-on to Ontario Works. They're separate programs. We want to use the same systems, the same forms and the same definitions, but the points were well made by those two speakers, and we don't intend to vary much from their present systems. In particular we do have branch offices—the example given of our office being 30 miles from Keswick. Our branch office is a mile and a quarter from that location, and we'll design the system to meet the customer and client needs we have to address.

The province has supported the integration of services at the local level and encouraged CMSMs to design local solutions to fit local needs. In York region's case, we are moving to consolidating operations of our municipal non-profit and our local housing authority into the regional corporation. In this way, we can gain new efficiencies and develop new flexibilities in program delivery. In order to successfully complete this process, we require the support of the Ministry of Municipal Affairs and Housing in clarifying a number of items in the legislation and assisting us in dealing fairly with housing authority staff.

First of all, we need the same degree of flexibility to transfer our housing corporation into the regional operations as with the OHC assets. We need to deal with the transfer of those assets and staff at the same time and with the same degree of fairness. If you look at the report of the CAOs of Ontario, you'll see that a number of human resources or personnel matters need to be addressed. We have a short time to do that, and we need to know the resources are there to deal with the liabilities—the sick leaves and other payouts that are part of the current benefits programs—and that we're not assuming unfunded risks that will burden our operating budgets.

The legislation provides the ability to transfer public housing properties without attracting land transfer taxes. We require clarification that the same provision will be applicable to municipal non-profit properties during the transition process in order to allow assets to be consolidated within the regional corporation.

As well, we require clarification that there will be provisions to allow CMSMs to hold mortgages on social housing properties which will be owned by the regional corporation. Currently, the Municipal Act restricts municipalities to the use of debentures for such purposes. You can see that if we're going to respond to the unmet needs and the need to increase housing, part of that will have to be through the same leveraging of mortgages that is currently available in other housing programs.

Finally, we require confirmation that the province will assist CMSMs in ensuring that housing authority staff are treated fairly by ensuring that funding is made available to pay out accumulated sick leave and attendance credits as well as addressing severance entitlements where employees are being transferred into the regional corporation. In York region, these costs are estimated to be in excess of \$300,000 for just 20 employees. If you project that across the whole portfolio, it's about \$15,000 per employee. Our colleagues in other CMSMs are projecting similar impacts running into millions of dollars, related not only to employee costs but to capital cost repairs and requirements. We want to be assured that we're not left holding and carrying an empty bag when the transfer takes place. I do want to add one other point: we are embracing these changes very much, and we look forward to taking on the responsibilities, but we can't just look at the current portfolio.

My last comments are that, as I noted earlier, the transfer of social housing responsibility not only requires CMSMs to take on the administration of existing housing programs, but also to begin to develop solutions to meet the growing demands for affordable housing in our communities. In York region, the waiting list stands at more than 4,500 households. The demand on all our shelter facilities far exceeds supply, and while funding has become available to assist in meeting the needs of the homeless, we need new dollars to meet the need for permanent affordable housing.

The Social Housing Reform Act opens the door to providing municipalities with new tools to develop new housing supplies. We ask that these tools be clarified, and encourage the province to join the municipalities in developing new solutions to this pressing need.

In closing, as I've said, we embrace the transfer and taking on the responsibilities as part of the local service realignment swap, but we don't have the resources to deal with unmet needs. Those resources have to be shared by both the federal and provincial levels if we, as a growing municipality, and other municipalities are to be able to respond to the continuing need for good housing in all sectors.

If we have time, Madam Chair, I would highlight the recommendations of the CAO group, which is in the last attachment. I won't read the whole thing but will just highlight the recommendations.

The CAO group recommends that the regulations be circulated in draft form to permit review and input prior to finalization, so we can get an idea of what's happening and give you our response quickly.

We recommend the province assume more of the financial risks associated with the future operation of existing social housing, as described in this report.

We have a lengthy section on human resource risks and liabilities, and we recommend the provincial government provide 100% funding to deal with the transitional costs of human resource liabilities that may arise through the transfer process, including any resignations or layoffs subsequent to the creation of the local housing corporations, in conjunction with service managers' decisions with respect to local housing corporations, and that it be consistent with the legislation.

Insofar as the federal funding transfer, we recommend the provincial government provide more open-ended assistance for properly documented transitional funding, as is proposed to be done with respect to the cost of title searches and transfers for public housing. We further recommend that the allocation formula for federal monies be discussed with service managers before any decision is made.

The Chair: You have about one more minute, Mr Wells.

Mr Wells: We recommend that the role of the Social Housing Services Corp be confined strictly to the responsibility of replacement reserves, which I had mentioned previously. Finally, we would recommend that the legislation be amended to allow service managers to hold mortgages. We further recommend that the legislation be amended to permit service managers to treat their municipal non-profit housing corporations in the same manner as provided with respect to the local housing corporation, including provision of exemptions from other provincial acts which may apply to the transfer of assets.

Mr Marchese: With all those changes, we might as well withdraw the bill.

The Chair: Thank you very much, Mr Wells. There is no time for questions.

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ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair: The next presenters are Ann Mulvale, president of the Association of Municipalities of Ontario, and Peter Hume. You have 20 minutes.

Interjection: Congratulations on your election.

Mr Guzzo: Let the record show that the councillor from Ottawa beat not one mayor but two. I think that's very important.

Ms Ann Mulvale: Madam Chair and members of the committee, we thank you for your kind words of congratulation. We hope you feel similarly when we leave you.

Peter Hume has chaired the Association of Municipalities of Ontario's social housing committee and will be speaking for most of our time today. We're assisted by Dino Zuppa as the AMO staff who's had a great role to play in the recommendations that have emanated from our committee. This submission is prepared with the

assistance of AMO's social housing task force, the Ontario region social housing group and Ontario municipal social service housing workshop group.

With Bill 128, the province has taken some positive steps. Minister Clement, at the recent AMO conference, confirmed that all federal social housing dollars will be flowed to municipalities in a transparent fashion: the provision of transition funding related to start-up costs, local housing authority realignment, property management software and normalization of title; \$58 million in one-time risk management funding; streamlined administration of some programs; the development of province-wide standards; the transfer of public housing to municipal jurisdictions; and additional powers to deal with projects in difficulty.

Although social housing has been devolved to municipalities, the province must still play an important role in protecting and enhancing the future of social housing and minimizing the financial risk to the municipal property taxpayer.

AMO—and likely you've heard this from others—has consistently expressed concerns about:

Income redistribution programs funded through the property tax base: we believe that is wrong.

The financial capacity of municipalities to increase the supply of affordable housing: we are really uncertain about that capacity.

Protecting municipalities from significant future financial risk related to housing programs: we believe an inappropriate exposure has been passed down.

We're concerned about maintaining the condition of existing social housing, ensuring a smooth social housing devolution from the provincial to the municipal order of governments, and providing maximum flexibility and accountability regarding social housing administration.

The provincial role in removing income redistribution programs from the property tax base is one we engage you in at every possible opportunity. Income redistribution programs should not be funded by property tax. AMO offers that the time is right to begin removing income redistribution programs from the property tax base since the provincial fiscal house is in order. To its credit, the government has already taken some positive steps in this direction with the further reduction on education property tax and the move to 50% cost-sharing of ambulance and public health.

We believe the province has a role in increasing the supply of affordable housing. It is a critical role. Municipalities remain concerned about the provincial perspective that municipalities are fully responsible for creating new affordable housing for their citizens. The increased incidence of homelessness, combined with the lack of new affordable rental housing in many areas, illustrates the need for immediate federal and provincial funding and aggressive action to build more affordable housing. This problem exists throughout the province, and the members of AMO—and we represent 97% of the population of this province—continually remind us of that need.

Municipalities require a full range of power to ensure creation of more affordable housing, like bonusing and the ability to register on title any financial investment by CMSM and the DSSABs to make sure property tax dollars are protected.

With that positioning, I'll hand the balance of our submission over to Peter Hume, the chair of our social housing committee.

Mr Peter Hume: Thank you, Madam Chair and members of the committee. I'm here to talk to you about the provincial role in protecting municipalities from significant financial risk because, as I'm sure you are aware, we're very concerned that we be protected from any risk associated with this bill.

The government has recognized that we, as municipal leaders, clearly have the ability to successfully manage and administer a variety of services, including social housing. We have the ability to integrate human services into the social housing portfolio, which make sense both for the client and for efficiencies. However, the Social Housing Reform Act seriously exposes municipalities financially. What we are looking for is full disclosure on assets and liabilities and to structure the transaction so that there is some sort of protection for us from the liabilities associated with social housing. We believe what we are asking for, and our approach in protecting municipalities, is critical, and I'm going to go through a couple of issues for you.

Capital repairs: adequate funding should be provided to offset any identified shortfalls in capital replacement reserves and funding for public housing. Capital risks associated with future repair and replacement costs which cannot be paid from the normally funded reserve accounts provoke one of our greatest anxieties. While \$58 million in one-time funding has been identified for future capital funding, we anticipate there is unfunded exposure to Ontario municipalities in the order of an additional \$40 million a year for provincial non-profit social housing units. An agreement is needed with the province for the development of a mutually acceptable process to define and limit these potential liabilities and to compensate for any shortfalls.

We're also looking for a portfolio assessment. A financial assessment of each portfolio is needed, along with complete due diligence exercises, technical audits and a complete review of the organizational and financial health of housing providers. The province must fund this work as part of its transfer.

Market fluctuations: I'm sure we all benefit when markets are good and we all suffer when markets are bad. What we're looking for is a mechanism for dealing with the impact of cyclical depressed market rents, which need to be addressed in the funding model. We know the funding model will be dealt with through regulation, but what we're looking for is some indication that this concern will be dealt with.

A further mechanism is needed to protect municipal property taxpayers from increased social housing costs stemming from such matters as rising interest rates,

increased utility costs or operating subsidy requirements. Mortgage interest changes in particular can result in dramatic subsidy increases. I'll come back to the good market and the bad market. We estimate that every sustained one point increase in mortgage interest for social housing will increase Ontario municipal subsidies by about \$32 million a year. This and the other matters mentioned bring a great deal of uncertainty and risk to the municipal financing responsibilities.

Another financial exposure for property taxpayers is possible with the loss of federal social housing subsidies in the future. We must be protected from this potential exposure.

While the legislation provides us with some processes to deal with projects in difficulty, funding or risk limitation is required from the province with respect to underfunded reserves, projects with deficits and projects in difficulty.

There are numerous pieces of legislation and regulations that will impact on social housing. For example, proposed changes to the Ontario fire code or the Ontario building code could impact on costs that are beyond our control. A mechanism is required to limit our exposure where changes could not be reasonably planned for within the normal operating parameters of a housing program. The province should commit to funding any increase in costs associated with changes in legislation or regulations that impact social housing. Provincial policies and standards directly impact costs and therefore the burden on the taxpayer.

While there are some privileges within the legislation, municipalities inherit costs associated with reasonable efforts, grievances, pensions, sick-time payments and severance packages related to the transfer of provincial staff. These are not part of any transfer funds and must not be passed on, as they could be very significant. As the minister has some granting authority, this is clearly an area that must be part of transition funding as the impacts become apparent. I should recognize that the government has provided some transition funding which they announced at the AMO conference, and for that we're glad, but there's clearly a need for more.

The municipal tax base cannot sustain the apparent and not-so-apparent financial risks associated with social housing. It is up to the provincial government to implement sufficient and stable financial mechanisms in order to protect property taxpayers and municipal governments, not to mention safeguarding the future of social housing. AMO hopes that as part of the ministry's estimates process, the ministry plans for these matters and supports us as we take on this important responsibility.

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I want to move on from the financial to the provincial role in providing municipalities with maximum flexibility for the administration of this important program and accountability related to the transferred social housing portfolio. Providing flexibility in program design recognizes the diversity of municipalities across Ontario and the value of different approaches to satisfy varied

needs and circumstances. This principle is critical, but its application is uncertain as much of the implementation is through the regulations following Bill 128. Municipalities must have influence in both sets of regulations: the regulations for the Ontario Housing Corp units and the regulations for non-profit units. Not knowing the details of the regulations or having any influence in the drafting of regulations constrains municipalities. The ministry's regulatory work must benefit from our perspective.

Although some sections of Bill 128 respect local flexibility, other sections do not. The Social Housing Services Corp is one example where local flexibility is not respected. The Social Housing Reform Act requires that all CMSMs and DSSABs become members of the Social Housing Services Corp. There is more prescriptiveness than flexibility related to the proposed corporation. The governance structure of the corporation is fixed. AMO has consistently expressed concern for accountability from any special purpose body, and this entity is really no different. The SHSC will conduct business that municipalities already conduct: bulk purchasing, insurance, pooling reserves. After the year 2004, municipalities will be responsible for financially funding this new special purpose body.

Accountability for social housing must be through elected municipal councils and not through third parties or special purpose bodies. In a municipally funded and managed social housing system, we believe there is no need to replace the provincial government with a province-wide body. Rather, authority for social housing should be devolved directly to the municipal level of government. No new province-wide organizations should be set up for the housing system unless municipalities determine the need and unless they decide on the purpose and composition of such organizations. At the very least, it would have been preferable to have afforded the 47 CMSMs and DSSABs an opportunity to self-determine how the benefits of co-operative effort for efficiencies could be achieved.

The Chair: I'm going to have to ask you to wrap up, please.

Mr Hume: OK. In summary, Bill 128, the Social Housing Reform Act, does give us some say for pay, and the province has adapted some of our ideas for the transfer, but we believe there is more to be done.

In conclusion, we are calling on the province for the following: the provision for due diligence on the state of the social housing stock; financial assistance with capital repair costs; protection from any significant future financial risk; and assistance in meeting the demand for social housing. Thank you.

The Chair: Thank you very much, Mr Hume. Unfortunately, we don't have time for questions.

REGION OF PEEL

The Chair: The next delegate is Roger Maloney, region of Peel.

Mr Roger Maloney: Good afternoon. My name is Roger Maloney. I am the chief administrative officer of the region of Peel and, prior to assuming that role in 1997, I was the commissioner of housing for Peel and the general manager of Peel Living, so I have an extensive background in housing and a lot of knowledge in the housing field. Keith Ward, our commissioner of housing and general manager of Peel Living, is with me here today.

I want to thank you for the opportunity to appear before your committee today on this important legislation. In my presentation, obviously you're going to hear some duplication of what you've already heard, but I think that just reemphasizes some of the key issues in this legislation that have a lot of us concerned.

In my presentation, I'm going to focus my remarks in five specific areas. I'm going to start with a little background on Peel region, I'm going to talk a bit about new housing stock and I want to talk about the financial risks from the view of municipalities. I also want to talk about the inadequacy of the replacement reserves and some of the limitations on the municipal authority as proposed in the legislation. Then I will make some concluding remarks.

First of all, some quick background on Peel region. Peel is often lost in the shadow of Toronto and is sometimes misunderstood because of that. With approximately one million people, Peel is Ontario's second-largest municipality and is thus the second-largest service manager designated under the Social Housing Reform Act. Approximately 10% of the total provincial housing bill for social housing is paid by Peel. To put that in perspective, it's \$83 million on about \$765 million.

Peel was one of the earliest municipalities to set up a municipal non-profit housing corporation, a corporation that prides itself on being a responsibly run business with a strong social conscience. Peel has steadfastly promoted the interests of affordable housing for well over two decades.

Peel has enjoyed tremendous political support for housing within our municipality: 18 out of 22 members of our regional council sit on the board of directors of our housing corporation, and that has been consistent over the term of the corporation, which is over 20 years.

Peel is perhaps unique in Ontario in experiencing both tremendous growth—we grow by 25,000 to 28,000 people per year, and that's been consistent since 1974—at the same time as our two major cities, Brampton and Mississauga, are maturing and showing signs of demographic shifts and inner-city problems that go along with that maturity.

Our poverty rates are dramatically outpacing provincial norms. In Peel itself, in 1991 the poverty rate was 9.7%; in 1996 it was 15%. We expect in the next census that it's going to be even higher.

Our housing needs are increasing and they are increasingly complex. Our municipal non-profit waiting list is now more than 10 years long, with more than 30,000 people on the waiting list for housing. We have been

forced to get into the shelter business, a business we would like nothing better than to shut down. We have two shelters that we opened in the last year or year and a half because of the crying needs in the community.

Given these needs, which our staff and our elected officials are so aware of, and given our desire to see the best, most cost-effective service to both those people in need and our taxpayers, Peel has been anxious for this legislation to come forward. We fully support the government's view that we, as the local level of government closest to the community, can do it better. With minor changes to this bill we think we can do just that, but it will take more of what this bill does not speak about, and that's money, for us to really do that job. Peel is not poor. We have managed our growth prudently, but absorbing the full cost of an income distribution program as large as social housing is beyond our capacity and beyond the capacity of most municipalities.

Consider that social housing used to be only 1% of the provincial budget. Consider that Peel is now paying 22% of our net budget toward social housing. That's within Peel as well as the contribution to pooling in Toronto. It's pretty obvious who has the room to handle such big risks inherent in social housing programs and projects. Any increase in subsidies could have an unacceptable impact upon the property taxes that our citizens pay. Of course, this is a big concern to the municipal sector, and not just in Peel.

In terms of new housing stock, first of all the province must provide assurances to protect the existing stock of affordable housing. The province and the federal government must provide the resources to respond to current and emerging unmet needs with new housing stock. We are a partner in the creation and delivery of responses and we will work enthusiastically with the government toward a restoration of provincial resources toward housing. We will gladly do our part. We've had discussions internally with our council about waiving levies. We see that as something that a regional municipality can do. We'd be remiss if we did not ask you to do your part toward new housing from the provincial point of view, and we need to ask the federal government, for new housing stock will require a tripartite approach, from our perspective. It involves the province, the federal government and the municipalities, and we all have to share in the production and the costs of things.

In terms of financial risks—you've heard a lot of that today—aside from our dismay about the withdrawal of both the federal and provincial governments from helping people in need, our major concern with this legislation revolves around the financial risks that are being passed down to us. Throughout all the devolution discussion leading up to the introduction of this bill, no one in the province has provided any hint that the risks we have perceived will be offset in any way. The legislation continues that theme and thus prolongs the anxiety for us.

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Peel believes certain costs would most appropriately be borne by the provincial government. Examples of those costs are:

- Costs associated with design, construction, financial or organizational decisions predating our involvement. We should not be paying for someone else's decisions.

- Compensation for physical and organizational review of all projects coming under our jurisdiction. We should know the condition of the buildings and that should be provided to us and be paid for by someone else.

- Initial funding or a guaranty of future funding either to put the replacement reserves on sound financial footing or to pay for remediation needs exceeding the capacity of existing reserves. That's something I want to talk about a little more.

- Operating subsidy demands driven by economic factors beyond our control or capacity. We need some help with that in the future if the economy turns around. If mortgages start going up instead of going down the way they are, just like on the Ontario Works side, if we get into a situation where Ontario Works caseloads go up, there's no way municipalities will be able to pay those costs. In the long run we'll need help.

- Repairs and retrofits necessitated by changes in federal-provincial regulations. As you've heard before, if there's new legislation, we shouldn't have to pay the tab.

- Transitional costs pertaining to the creation of new local housing corporations, and with the subsequent transformation of those corporations into the appropriate locally determined municipal model, including severance costs attributable to employees' tenure under the crown and all liabilities carrying over from their time under the province. I go back to the change with OPAC. When the Ontario Property Assessment Corp was introduced, the province picked up those costs. That's what we're asking for. Those costs should be picked up to the end of this year. We assume new costs from January 1 onward, and from our view that's fair.

I'm aware that the submissions from both AMO and the regional CAOs and other municipalities got into more detail on some of the risk areas. I just want to focus on the capital side and the reserves from our perspective because Peel has done some specific work.

As some committee members are aware, a number of regions have undertaken technical audits and replacement reserve studies for projects in their areas. Peel was quick off the mark, and ours is still the most comprehensive study because of both the size of our sample and the in-depth nature of the engineering analysis that we undertook. We spent more than half a million dollars on these studies for independent engineers alone. That's how seriously concerned we are about the potential future hit. Having said that, all the studies from the regions have come up with similar conclusions. The result is clear: based on the amount of money already set aside in project reserve funds, and the additional amounts set aside each year according to the provincial formula, we're going to run out of money.

Based on our work, a very conservative estimate for our housing stock of almost 6,000 units, we're saying we're short \$57 million. If you look at the full stock

across the province, we're saying we're short \$1 billion and there are two choices. The province could fund that \$1 billion upfront, which is highly unlikely, or you can look at funding it over a longer period of time by increasing reserve contributions and having the province pay some of that.

I don't want to be an alarmist. In the scheme of the entire program it's not a staggering number, particularly to ensure a stable supply of affordable housing at far less than what it would cost not to maintain the stock properly and be forced into premature demolition and replacement. I'm sure you've all seen pictures from the US and Britain, where they blow up their old housing; they dynamite it and start over again. We certainly don't want that to happen in Ontario, and if we don't take care of the future in terms of those reserves, that's what we're going to end up with.

I find it somewhat ironic that social housing would run afoul of the new provincial Condominium Act. I headed up a condominium myself, so I'm familiar with it. The act requires just the sort of study that we have started to do in Peel and which all service managers would like to see done across the board. The act further requires that reserves be bolstered to levels determined by the studies.

Our problem at the municipal level is that every dollar added into the reserves from now on is another dollar added to the property tax base, unless the province steps in as we request, so that's a crucial issue for us.

In terms of limitations on our municipal authority, there are a couple of things. The additional authority conferred upon the service managers in this act permitting more effective action in the promotion and delivery of affordable housing is most welcome, first of all. The authority would be made more effective with a couple of changes which we believe everyone should be agreeable to. Without these changes, options would be limited and less than optimal choices will be forced upon us, reducing the benefits that otherwise would be achievable under the legislation.

Refer to the absence of the authority of service managers to take out mortgages and the absence of flexibility to deal with municipalities' own housing companies as they are permitted to deal with under the new local housing corporations. Given the securities involved in mortgages and given the scrutiny exercised to the mortgage-lending process, nobody could act irresponsibly even if they were so inclined.

In Peel we're struggling to find ways to create new housing through partnerships with the private sector. We've talked to a lot of developers who have some interest. The best use for us is traditional mortgage financing instruments, and we'd like to have the chance to explore those opportunities and possibilities.

In Peel we intend to merge the Peel Regional Housing Authority, soon to be called a corporation, into our own municipal housing company, Peel Living. Our position for the last 20 years, in fact before that provincial housing authority was set up, was that that was a duplication of service in Peel and it never should have happened. The

province set up a separate body when we already had one that was three or four times the size of it. So from our point of view, we're pleased that's finally going to happen, that we can actually merge those two organizations, save some money and get rid of some confusion for the taxpayer. We're pleased that someone has listened to us on that.

Unfortunately, this simplification now has to contend with the different rules governing the operation of the governing bodies. There are some severe impediments to rationalization. The paperwork and costs can be largely dispensed with through amendments to this bill. Matching treatment for local housing corporations and municipal housing companies, including corresponding exemptions from legislation applying to asset transfers, with land transfer tax, would do the job.

In conclusion, it is difficult to comment on this legislation in a detailed way, since its implementation is going to rely on the regulations, which we haven't seen yet.

It's important to acknowledge that we're moving in the right direction. It's important that both service managers and housing providers be involved in the formulation and review of the regulations. In Peel we recognize that the province and our own housing providers are, and always will be, key partners in effective program delivery. We look forward to the province being a partner, not just in the programs on hand in the legislation, but in programs yet to come. Needs that just will not go away challenge all of us to find new ways to work together.

I want to make one final comment on what I heard about surpluses a little earlier. The perspective of the region of Peel is that those surpluses should be shared. There has to be some incentive in the system, and we're saying the housing providers have to have some incentive to find savings and to find best practices; that's what benchmarking is all about. And we want a share of those savings. We're saying to Toronto, "Our housing costs are down. Why aren't yours down? You should be emulating our best practices to get your costs down, to get our pooling numbers down." There has to be some incentive. We said to Toronto, "Let's share the savings 50%." Our view is, there has to be some emphasis and some push to get people to find savings. If you benefit from it, you're going to look for them. If you don't benefit, you're not going to look for them.

I'll close on that and take any questions.

The Chair: We have perhaps time for one question from the government.

Mr Carl DeFaria (Mississauga East): I want to thank Mr Maloney for his presentation. He is the CAO for the region I represent, and before he started I turned to my colleague, the parliamentary assistant to the minister, and told him to pay close attention, because you are a good money manager for the region, and the region has done excellent work. That's all I want to say, Madam Chair.

Mr Maloney: If I could make one supplementary comment on how good a money manager the region is, we're debt-free, AAA rating. We haven't had a tax increase in 10 years and won't have one this year.

The Chair: That brings us to being right on schedule. Thank you very much, Mr Maloney.

TANNENHOF CO-OPERATIVE HOMES, OTTAWA

The Chair: The next delegation is Bernard Daly, chair of the board of Tannenhof Co-operative Homes, Ottawa. You have 10 minutes.

Mr Bernard Daly: I speak for Tannenhof Co-operative Homes for seniors in Ottawa. I read this brief at our AGM last night and got the seniors' equivalent of a standing ovation.

Our 74 units are home for 12 couples and 62 individuals, all over 55 years of age, including one soon to be 100-year-old lady who volunteers on Thursdays to help the seniors at St Pat's home. We have 21 market units and 53 assisted households, and we are in our 12th year of solid business operation.

In general, we support all the brief and the clause-by-clause review of Bill 128 by the Co-operative Housing Federation. Please consider that brief as part of our presentation.

Our coordinator does all the income verification for members of our 53 income-assisted units. These members truly live in fear that one result of Bill 128 will be that responsibility for income verification will be taken out of the secure trust and confidentiality of our in-house office and centred in some distant municipal building, where they will always have to deal with complete strangers. We therefore strongly urge that Bill 128 be amended, and eventual regulations written, in such a way that income verification can remain in co-op homes. There are recommendations in the brief, which you know.

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Also, we have a great concern that a future funding formula will force us to charge market rents that may be beyond the means of our middle-income pensioners. At present, the provincial government recommends an inflation factor, but we are not obliged to enforce the full amount. To balance our budget, we can weigh and balance the inflation factor, the risk of revenue loss if excessive charges cause vacancies, and savings realized on other aspects of our operation. CHF recommendations on sections 98 and 99, among others, apply here.

In general, we want co-op homes to have the level of responsible autonomy provided by our present contract. Under Bill 128, which cancels our contract, the aim should still be to keep business affairs at the local level as much as possible and not with big government, whether municipal or provincial. We support all the CHF recommendations about limiting bureaucracy and consulting local housing providers.

With others, we urge that the management of our capital reserves be left with us. We have been prudent, creative and responsible. Please amend the relevant parts of section 98 and others. Local autonomy should also prevail for such details as managing our own waiting list, so please amend section 65.

Recently, we were required to participate in co-ordinated access to the Ottawa-Carleton social housing registry. Initially, we were expected to download 40,000 files each weekend to update our waiting list. That took up 23 solid hours on our office computer, making it unavailable for our own use every Monday. Eventually we negotiated to receive a short list faxed once a week. Maybe someone needs those 40,000 computer files, but to us they were examples of the hazards of "bigness." What perhaps looked to planners like an economy of scale was just a high-cost nuisance at our level of local service to people in need.

Shortly before Tannenhof opened, Statistics Canada published, in 1990, a study of co-op housing in Canada. It noted that government policy at the time saw co-op housing as a way to provide lower- and middle-income persons with safe, decent, affordable housing that was not subject to the convulsions of the rental market. Census data gathered for that study showed that co-op housing resulted in just what the policy aimed to achieve. Ten years later, our co-op still does that. It provides excellent, affordable homes for a vibrant mix of lower- and middle-income seniors who take pride in our ability to manage our own business in full compliance with all government demands and despite all the market ups and downs over the years. Nobody is just a paying tenant. Everybody is a member called to help make the place work. Co-operative homes do work, and seniors can keep their own co-op working well.

The Chair: Thank you very much for your presentation, Mr Daly. We have time for perhaps one question from Mr Caplan.

Mr Caplan: Thank you, indeed, for your presentation.

A couple of weeks ago there was a reception here, in the legislative dining room, for all the co-operative industries—credit unions, all the folks from around Ontario who engage in co-operative principles. There was a speech by Mr Young, the parliamentary assistant to the Minister of Finance and member for Willowdale, extolling the virtues of the seven co-operative principles.

You are well aware of the seven co-operative principles, but for those who may not happen to be, they are: open membership, democratic control, economic participation, independence, co-operative education, co-operation among co-operatives and community.

I want to leave some time for you to reply, but my basic question is this: what does Bill 128 do to those seven principles of co-operatives that the parliamentary assistant to the Minister of Finance was extolling not three or four weeks ago?

Mr Daly: We don't really know yet, because we don't know all the regulations, but our fear is that we will lose our autonomy, that we'll lose the possibility of being creative within our community and building according to our own capacities and that we'll be beholden to regulations that come from outside and which we have had no share in developing. That's our main concern.

Mr Caplan: So open membership is lost through the central registry. Democratic control is lost to government regulation—

The Chair: Mr Caplan, you've had your question. Ms Lankin?

Ms Frances Lankin (Beaches-East York): Actually, it's a question I have been exploring with groups in my own riding and I think I want to give you a little bit more time to continue to pursue that. I think co-ops are a very special part of housing options that are out there. People who live in co-ops choose to live in that setting where there is a philosophy behind that type of lifestyle. So the issues of accessibility, open membership and democratic control and the responsibility resting within the co-operative: this bill has an impact on them. Perhaps you can continue to elaborate.

Mr Daly: I think one of the things that's most apparent in our own house is that there are certainly people, especially some of the older women who are single, who would never be able to live in the kind of community in which they live if it were not a co-operative, if they were not with people who have more ability and are prepared to share, helping them to make the place run. If these people were living just as individuals in the rental market, they would be at the lowest level of poverty, whereas now they enjoy something like a decent quality of life because of the environment that's created by the neighbourhood and by the community of a co-op.

The Chair: Thank you very much, Mr Daly.

ONTARIO ASSOCIATION OF NON-PROFIT HOMES AND SERVICES FOR SENIORS

The Chair: The next submission is Sarah Phillips, board member of the Ontario Association of Non-Profit Homes and Services for Seniors. You have 10 minutes.

Ms Sarah Phillips: Good evening. In addition to being a board member on the Ontario Association of Non-Profit Homes and Services for Seniors board, I'm also general manager of a seniors' supportive housing project in London.

For over 80 years, the Ontario Association of Non-Profit Homes and Services for Seniors has represented the not-for-profit organizations across Ontario that are dedicated to meeting the housing and long-term-care needs of seniors. Member operations span the full spectrum of the not-for-profit long-term-care system, including seniors' housing, facilities and community services. More than 70 member organizations are involved in the ownership and management of non-profit housing for seniors in communities across Ontario. These include projects previously administered by the federal and provincial governments, some of which receive supportive and/or community service funding from the provincial government to deliver services.

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OANHSS is pleased to have the opportunity to present the views of not-for-profit organizations across the province that serve seniors to the standing committee on justice and social policy. What I'd like to do is just summarize some of the recommendations. We're submitting,

obviously, something in writing. I would just like to highlight some of our recommendations. There are 13 of them:

(1) In conjunction with the introduction of the Social Housing Reform Act, the provincial government must pledge renewed support for funding new subsidized social housing.

(2) The Social Housing Reform Act must require that service managers ensure that any savings in expenditures on existing social housing are reinvested in new housing or in enhancements to existing housing. The level of total government expenditure on social housing should be maintained at least at the current level.

(3) The legislation must balance the need to protect the interests of the province and the municipality with the need to ensure that housing providers have the flexibility to exercise good judgment and continue to be responsive to local community needs.

(4) The province of Ontario must require municipal service managers to involve the owners and managers of social housing in the development of any new rules related to that housing.

(5) Both housing providers and municipal governments need to know how the province intends to deal with the likelihood that future capital replacement costs will exceed the reserves available. For example, there was a recent study done in London on the technical building audit and reserve fund studies which clearly showed that reserves are inadequate to meet future needs, especially in years four and five prior to or after a download.

(6) We believe it is critical that the benchmarks reflect the real cost of providing the supportive living environment that seniors need, including the sometimes less tangible social support provided by OANHSS members. As the costs of different projects are compared to one another, it is essential that the comparison involve projects that are similar. All of the factors that contribute to higher costs must be considered.

(7) OANHSS members are concerned that a coordinated access system will not be sensitive to the unique character of certain housing projects or respect their historic relationship with their founding community. Co-ordinated access systems must respect the mandate of housing providers to address the needs of particular ethnic, cultural or religious communities which in many cases have made significant contributions to the organization and rely heavily on the volunteers within those communities.

(8) Development of a coordinated access system for people with special needs must involve collaboration with the provincial support ministries and sector associations like OANHSS which represent the organizations that provide housing and support services. So the references would be to MCSS and the Ministry of Health being involved in the coordinated access development system.

(9) Any coordinated access systems that are put in place must undergo a thorough evaluation after the first

year, involving input from all stakeholders, to ensure objectives are met.

(10) The most effective scenario for seniors' non-profit housing is to have the income verification remain with the individual non-profit service providers versus a centralized income verification system.

(11) If the centralized pooling of capital replacement reserves were pursued, we strongly emphasize that housing providers must have unimpeded access to their funds when they are needed.

(12) The province, in finalizing the transfer, must require that service managers work collaboratively with the community-based organizations responsible for delivering social housing in their communities. These discussions need to include the process the service managers will put in place to manage their responsibility for financial testing and coordinated access.

(13) OANHSS members want assurance from both the federal and the provincial governments that the federal not-for-profit programs will be flexible enough to allow federal stock that currently operates as long-term-care facilities to continue delivering much-needed long-term-care services.

In conclusion, I'd like to say that OANHSS members, like the ministry, are committed to a process for transfer of responsibility for social housing which has no negative impact on the people who live in that housing. Our association is prepared to work with the province and municipalities to ensure that this is accomplished.

The Chair: Thank you, Ms Phillips. There is time for a couple of questions. Government members, anyone have a question? No? We'll turn to Mr Caplan.

Mr Caplan: Thank you very much for your presentation. A number of your recommendations follow along the lines of the coordinated access system. I'm very curious what you believe will be the experience—perhaps you could give us the benefit of your experience—with the access system for special-needs housing, and what's going to happen with 47 different attempts around the province, certainly as far as consistency, but perhaps with some other things you might have some expertise in.

Ms Phillips: I think the concern of most members is that in the legislation it doesn't define special needs. For example, is "special needs" a religious group, an ethnic group, a physical disability, a mental problem? I think we're looking for a little bit more clarification on who exactly falls into the category of special needs.

I understand your point about the confusion of coordinated access systems. I think that relates to the whole confusion that this bill presents in terms of having 47 municipalities delivering, potentially, an administrative model that varies from community to community, and it would be the same with coordinated access. What we're looking for, I guess, is a bit of flexibility in the bill that would allow a coordinated access system to be developed locally, as it does state in there, so that each special-needs group, such as seniors' supportive housing, could maintain or develop their own waiting list that would meet the needs of their community locally.

Mr Caplan: Do I have time for another question?

The Chair: No, you really don't, Mr Caplan.

Ms Lankin: I also thank you for the presentation, the number of interesting points. I want to pick up on your recommendation number 6, which talks about how critically important it is that benchmarks reflect real costs of providing supportive housing. I'm reminded of the time when as Minister of Health I was attempting to work with a group to provide housing on the top floor in a new building that was being developed for ventilator patients who were in a long-term-care facility but could live in an apartment. The Ministry of Housing's benchmark on costs didn't allow for an apartment large enough to accommodate a ventilator wheelchair. It was a real, practical example of, through ministry silos, the problems.

It was a problem when it was run by the province. Now, bringing it down to the municipality level, and with the presentations we've heard of municipalities looking at cost savings and surplus and shared surpluses, maintaining those shares without a guarantee of that money being reinvested back in, I'm really worried about these benchmarks and what they mean for different groups.

For the group that you serve, can you tell us why housing costs might be higher than an ideal benchmark and what it might mean for you to be driven to that level?

Ms Phillips: I'm glad you brought that up because that's exactly the concern. There's a fear in a lot of our members that when the ministry is embarking on this benchmarking exercise, they won't take into consideration the special-needs group.

For example, if you're looking at a capital reserve study that gives assumptions in terms of the life expectancy of carpet or paint or flooring, the general life expectancy of carpet in a capital budget is 15 years. Anyone who runs seniors' supportive housing or supportive housing in general knows that you're lucky to get two or three years out of your carpeting. So I think we're looking at those increased costs in terms of designing and maintaining buildings that are physically able to meet the needs of seniors. But then also a lot of seniors' supportive housing providers and generally supportive housing providers within their management costs have built in enhanced management dollars. So not only are they doing administration but they're also doing social service work, counselling, reassurance and a lot of other things. So if you're looking at and comparing administrative costs across the spectrum, if you don't isolate out those special-needs groups that may be doing more than just administrative, I think that's a risk for us.

Ms Lankin: A really good point.

The Chair: Thank you very much, Ms Phillips. We appreciate your submission.

COUNTY OF GREY

The Chair: The next presenter is Norm Gamble, chief administrative officer of the corporation of the county of Grey.

Mr Norm Gamble: Thank you, Chair, members of the committee. I am Norm Gamble. With me is Rod Wyatt, the general manager of our local housing authority. I'd like to thank the Chair and members of the standing committee on justice and social policy for the opportunity of addressing you.

My experience with social housing is somewhat limited, although my experience with the devolution of social housing and with the transfer of service responsibilities between the province and municipal government is substantial. I have been involved with the devolution initially on working groups with the Crombie Who Does What panel. After social housing was included in the transfer mix, I participated on a roles and responsibilities working group with the social housing steering committee. Following that, I was appointed to and continue to be a member of the municipal reference group established by the Ministry of Municipal Affairs and Housing. At the same time, I've participated in numerous task forces of the Association of Municipalities of Ontario as well as being a provincial appointee to the provincial-municipal liaison task force of consolidated municipal service managers, CAOs and assistant deputy ministers of various ministries.

Coincidentally, I am currently the president of the Ontario Municipal Administrators Association, an organization of city managers and CAOs. Today my representation is restricted to that as CAO of the county of Grey.

At the outset, a point that must be reiterated is the draft legislation's failure to recognize that this is a transfer of responsibility from the provincial government to the municipal government. The draft legislation makes reference to service managers. There was considerable difficulty in the establishment of consolidated municipal service managers as designated by the Ministry of Community and Social Services. Not the least was the effort by the municipal sector to have municipalities designated, and not leave the opportunity for special purpose bodies either at that time or down the road. This is with the exception of the district service boards in northern Ontario.

This most recent draft legislation for some reason fails to even use the same terminology of CMSMs. Unless there is some logical and necessary reason, reference should be made to "designated municipalities" and boards in northern Ontario, as opposed to service managers, whatever that might entail. Although this point of terminology is minor, it is a continuance of an aggravation in the devolution process.

Another difficulty with the draft legislation is the immense amount of regulatory powers which will be left out of the legislation itself. As those regulatory powers are not yet established, we must speak not only to the draft legislation but to the presumed regulations in order to give the committee a full picture of the concerns in this area. That being the case, I apologize if some of my comments are made in reference to future regulations as opposed to the particular draft legislation as we know it today.

1730

I am attempting to address the committee only in terms of administrative and operational concern. The question of whether social housing is a philosophical fit with the municipal sector should be left to the political arena, although I would offer from my observation that there are a number of benefits to local operations as opposed to provincial operations. Many other service transfers are already finding efficiencies. Later in this presentation I will highlight some of the benefits I see in terms of local operation. The future financial liability questions have no doubt been brought to your attention many times and are responsibilities which the provincial government should retain.

A province-wide body: the legislation includes the establishment of a province-wide municipally controlled body for pooling of mortgages, insurance etc. As you have no doubt already heard, this body is not required. Municipal governments have a history of pooling where and when appropriate and/or meeting their needs in many ways. The perpetuation of yet another province-wide special purpose body is not necessary and should not proceed.

Local housing corporations: the draft legislation has an interesting, overly simple process in the establishment of local housing corporations replacing local housing authorities. Provincial staff have time and time again indicated that this process is necessary to avoid 47 different processes as a result of the existence of 47 CMSMs. I would argue that there are a maximum of three processes required. Those who wish to establish and use a corporation for their purposes is the first. The second is those who may wish to integrate the housing portfolio with another existing corporation, presumably a municipal or a non-profit corporation. The third process would fit those who have no wish to establish or maintain a corporation, which effectively would look and act as another special purpose body. It is already apparent that CMSMs have made their choices, and I assume the majority fall into the third process, which does not require the establishment of the arm's-length corporation.

Human resource issues: as the committee has no doubt heard, there are a number of outstanding issues in regard to the transfer of employees of local housing authorities and the potential employment opportunities for ministry staff. Of particular concern is the responsibility for severance payments, if required, and the responsibility for accumulative sick leave plan payouts to employees. Part and parcel of the human resource concerns is the need to move extremely quickly due to the timing of the draft legislation. There are CMSMs, such as my own, which are in a position today to make employment offers to all affected employees and thereby give them some sense of security for the remainder of 2000 and for their future, come January 1, 2001. In order to do so, there must be clarity of severance, benefits, pension conversion and reasonable-efforts positions.

Local autonomy: in tandem with the human resource issues is an overall concern that the legislation and the

devolution process itself not be overly prescriptive. Municipal government has shown again and again that it is quite capable of assuming new and different responsibilities on behalf of the provincial government. Each ministry responsible for devolution of a service feels theirs is by far the most complex and important devolution in the history of municipal and provincial relations. Naturally, all service transfers are important; however, we have considerable experience under our belts at this time with provincial offences, land ambulance, family benefits, highways etc, and the caution of the Ministry of Municipal Affairs and Housing is at times more than necessary. While it is recognized that municipal governments will have a learning curve with the assumption of housing, for many of us it is no more significant than the other transfers.

That being said, there are numerous reasons to move forward as quickly as possible with the transfer, as there are many benefits that can be passed on to the tenants and the community as a whole. In Grey county it is our plan to administratively integrate housing with other short-term accommodation needs, such as homelessness and hostel portfolios, as well as the county's long-term-care responsibilities in the operation of three homes for the aged. By establishing a single administrative unit that will be responsible for the shelter of our citizens, be it for 24 hours or 24 years, we will immediately focus, not on a single program such as subsidized housing, but on the overall community need of accommodation.

We also look forward to administrative integration in terms of the management of the bricks and mortar in the housing portfolio along with other properties of the county. Administrative support in the areas of finance, human resources and corporate research will provide more support to the local housing operation than was previously the case from distant provincial supports.

For these reasons, we are in fact looking forward to the devolution and can see that given autonomy, flexibility and, yes, responsibility, we can make for a far better system than currently exists.

We must also urge the provincial government to not be wholly prescriptive in its benchmarking proposals so that integrations as previously mentioned are either not possible or restricted.

In conclusion, the points I would respectfully recommend to the committee are as follows:

(1) Amend the legislation to be clear that it is municipal governments that are to be responsible and not some entity which could be established in the future.

(2) Amend the legislation to not require the establishment of the Social Housing Services Corp.

(3) Amend the legislation to allow for opting out of the local housing "corporation" process as an unnecessary step.

(4) Have the human resource issues of severance, benefits and pensions resolved immediately.

(5) Push on with the passage of the legislation and, just as importantly, the announcement of regulations, so

the municipalities can make this as effective a transfer as any of the previous.

Thank you for your invitation to speak and your kind attention.

The Chair: Thank you very much, Mr Gamble. We have time for a couple of questions, starting with Mr Gerretsen.

Mr John Gerretsen (Kingston and the Islands): Mr Gamble, just so I'm clear, are you in favour of the devolution to the local municipalities or are you not in favour? Because I take it that when you were a member of the Who Does What committee, you were not in favour of the devolution. Is that correct?

Mr Gamble: That's correct. At that point in time I was not in favour of it. I am finding now that the more experience we have under our belts that, yes, I would be in favour of the local operation of housing. I am not in favour of the local financial responsibility.

Mr Gerretsen: Just so that I'm clear, you're familiar with those sections in the act—coming back to the earlier part of your presentation—for example, subsection 47(2), that no action can be commenced against the government, in effect, or the Ontario Housing Corp, on the basis that a transfer constitutes or gives rise to anything mentioned in subsection (1)? In other words, an action cannot be taken against the government once you've taken it over. You're aware of that provision, aren't you?

Mr Gamble: I'm not aware of the specifics of that provision. I can only assume that it's a similar relationship problem that exists between municipal and provincial governments.

Mr Gerretsen: There's also another section—

The Chair: That's your question, Mr Gerretsen.

Mr Gerretsen: I'm sorry. Isn't there 20 minutes for the presentation?

The Chair: I said there was time for a few questions and you've had your time. Ms Lankin?

Ms Lankin: It's my turn now, Mr Gerretsen.

Mr Gerretsen: Of course. I realize that now.

Ms Lankin: You want to share, don't you?

Mr Gerretsen: Absolutely, I want to share.

Ms Lankin: I understand the points you were making about the efficiencies from integration, and particularly when you talked about administrative support to various types of housing programs that are there, "the management of bricks and mortar ... along with other properties." I understood that.

My ears perked up a little bit when you talked about the integration of programs. On the one hand, I like the words "a program for accommodation for all of our citizens," but it's a bit nervous-making when I hear "amalgamation of programs" around long-term care, around emergency shelters, around affordable housing and supportive housing. There are a lot of different goals and target populations, and I'm not sure what you meant by that, so I'm hoping you can put my fears to rest and perhaps elaborate on what you think the efficiencies and the benefits are of that kind of integration.

Mr Gamble: I would hope that you wouldn't misread what we've suggested as being a melting pot of responsibilities. We fully recognize the distinctive nature of different programs and different operations. What we find appropriate is to put a governance model and an administrative model that is concerning itself with all aspects of social accommodation. That doesn't mean that we're able to integrate the intake process of homes for the aged with the intake process of housing. We know that's not possible and perhaps not appropriate. But we think having a single governance at the county level that concerns itself with short-term, long-term and all types of accommodation needs is a good philosophical approach.

The Chair: Government members?

Mr Brian Coburn (Ottawa-Orléans): No, we'd like to give as much time as possible to the presenters.

Interjections.

The Chair: Members of committee, please. We want to make sure that everyone who is listed to speak has the opportunity to do that. We all know there is a vote this evening, so I think we should go to the next presenter.

Thank you for your presentation.

ECUHOME CORP

The Chair: The next presenter is Angie Hains, executive director of Ecuhome Corp. You have 10 minutes.

Ms Angie Hains: The first thing I'd like to do is send regrets from Jim Pike, the vice-president of our board. His mother is critically ill and he is with her in the hospital today.

Ecuhome is pleased to have the opportunity to speak to you about Bill 128, the Social Housing Reform Act. Ecuhome was formed in 1983 by seven Christian faith communities to respond to the lack of housing and support for single homeless people, particularly those who were leaving psychiatric hospitals. Initial funding was provided by the Ministry of Community and Social Services because there was no other funding vehicle available at the time. However, a few years later, the Ministry of Housing provided the funding that allowed Ecuhome to expand.

Ecuhome has grown a lot since 1983, and now has 400 units in 56 houses and three apartment buildings across the old city of Toronto. Tenants in the 56 houses each have a locked bedroom and share kitchen and bathroom facilities as well as the common areas of the house. Ecuhome's housing is all rent-geared-to-income and the housing is dedicated to people who are homeless and hard to house.

Ecuhome has not supported the idea of downloading the responsibility for social housing to the municipal level. We believe that senior levels of government need to stay in the housing business. We do not think that municipalities have the tax base to sustain social housing programs through economic downturns or to create new affordable housing.

However, we are committed to making the system work as well as it can. Ecuhome's goal continues to be to

provide safe, secure, affordable housing for people who have been chronically homeless and have difficulty maintaining stable housing. It is in that spirit that we offer the following comments on the legislation, and there are really three main areas I would like to speak to.

The first is a new funding model. In order to survive as non-profit housing providers after devolution, we need a funding model that works. The benchmarks the new funding model will be based on need to reflect real costs and allow flexibility to carry non-profits through lean years. The financial model does not mention any allowance for an operating contingency. We believe we need an operating contingency to see us through years where there are unexpected costs that are beyond our control; for example, a particularly cold winter or a particularly hot summer or big jumps in utility rates such as the ones that are being discussed at the moment. As a non-profit provider whose housing is 100% rent-geared-to-income, we are unlikely to have an operating surplus, no matter how businesslike a manner we operate in. We cannot generate a surplus by increasing market rents, because we don't have any market rents.

Ecuhome has effectively housed people who have been homeless in shared housing for over 17 years. Our houses are located in many neighbourhoods in central Toronto. Unlike most non-profit housing providers that began with new buildings, we began with older houses, typically 60 to 80 years old. The tenants we house can be hard on our properties. Some lack life skills and cause damage to the property or equipment either unintentionally or out of frustration. With a tenant mix and a housing portfolio like ours, there are unexpected costs that cannot be planned for. In order to continue to provide good-quality housing, we need to have an operating contingency built into the funding model that will allow us to respond to these events without going into debt.

The next area I would like to talk about is financial testing. Bill 128 gives service managers the responsibility for financial testing. This includes initial rent calculations, notice to tenants, annual recalculations, and entering into arrangements with tenants for repayment of rental arrears, all of which are currently the responsibility of non-profit landlords.

Our tenants have been chronically homeless and have had difficulty maintaining stable housing. Well over half of our tenants have a serious mental illness. Most of the people who apply to Ecuhome are coming from the street, or from hostels, treatment centres or hospitals. Many of them have no form of income when we first see them. It has been a long time since many have lived in permanent housing. Our relationship with the tenant often begins with our staff giving the tenant an offer of housing and assisting them to apply for Ontario Works. It takes time to develop a trusting relationship, but this is the cornerstone of the support we provide to tenants. As well as being a landlord, we provide the support our hard-to-house tenants need to keep them in stable housing. Our goal is to help them maintain their housing, to prevent them from being evicted and ending up back on the streets and in the hostel systems.

Rent calculations and recalculations and repayment schedules for people who have fallen behind in their rent are all part of our function as a landlord, and we believe this function should stay with the housing provider. I'd like to give you an example about developing repayment schedules to illustrate the point.

At Ecuhome, we regularly work out repayment schedules for our tenants who have fallen behind in their rent. Some of the tenants get behind because they're having a mental health crisis. Others, who are in recovery from addiction to drugs or alcohol, may relapse and struggle to maintain their sobriety. Our concern, as a supportive housing provider, is to help the tenant maintain their housing. This usually entails helping the tenant get the support they need to work through their crisis and, when this is accomplished, working out a repayment schedule with the tenant that's tailored to their situation. If the repayment schedule is not effective, Ecuhome may apply to the tribunal for a mediated settlement and it allows the tenant another chance to repay the arrears and keep their housing. We go to great lengths to keep people housed. Our tenant population is not only hard to house, but they're hard to keep housed. We believe it's more effective and efficient to help people keep their housing than it is to rehouse them once they've been evicted and are back in the hostel system or on the streets.

It doesn't seem likely that a service manager, no matter how well intentioned, will have the time or the knowledge of the individual's situation to allow them to develop an effective repayment schedule. Our fear is that cookie-cutter repayment schedules will not be effective with the hard-to-house population and the result may be more of our tenants being evicted and ending up back on the streets.

The last area I'd like to talk about is special-needs access.

The Chair: If I could just ask you to try to keep it as short as possible.

Ms Hains: OK, I won't read it; it's in the handout. But I'll tell you that as far as special-needs access is concerned, I don't think the service manager—

The Chair: You've got about three minutes.

Ms Hains: I'll speak real fast.

The issue, as I see it, is that centres for special-needs housing being left up to the service manager is not going to be particularly effective. If you're looking at the housing that's devolved to the municipal level at this point, there's usually a support service ministry involved which is paying for the funding for the support service that's going into that housing. Whereas the service manager may have control over access to the housing, they don't have control over access to the support system.

I think we would all agree that it's important to have transparent, clear, easy access systems for people who need housing and support, but that's best done in consultation with the support service ministries, the housing providers, the support service providers and the service managers and not just left up to the service managers. If it's left up to the service managers, it's just not going to work, no matter how well intentioned it is. That's all I really need to say about that.

I'd like to thank you for the opportunity of presenting my comments, and I have more copies of my presentation.

The Chair: Thank you very much for your presentation, Ms Hains.

Members of committee, that does conclude the public presentations. We will be considering clause-by-clause of this bill on November 28 at 3:30 in this room. I would remind members of committee to please have amendments in by November 23 at noon.

Again, I would remind you that November 28 is a Tuesday and not a Monday. Thank you.

The committee adjourned at 1750.

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Official Report of Debates (Hansard)

Monday 27 November 2000

Journal des débats (Hansard)

Lundi 27 novembre 2000

**Standing committee on
justice and social policy**

Domestic Violence
Protection Act, 2000

**Comité permanent de la
justice et des affaires sociales**

Loi de 2000 sur la protection
contre la violence familiale



Chair: Marilyn Mushinski
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Monday 27 November 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Lundi 27 novembre 2000

*The committee met at 1548 in room 151.*DOMESTIC VIOLENCE
PROTECTION ACT, 2000LOI DE 2000 SUR LA PROTECTION
CONTRE LA VIOLENCE FAMILIALE

Consideration of Bill 117, An Act to better protect victims of domestic violence / Projet de loi 117, Loi visant à mieux protéger les victimes de violence familiale.

The Chair (Ms Marilyn Mushinski): I call the meeting to order. Good afternoon, ladies and gentlemen. This is a continuation of the committee hearing on Bill 117, An Act to better protect victims of domestic violence.

Committee members, unfortunately I was not present at the last meeting, but my understanding is that we are considering subsection 3(2), paragraph 7. Is there further consideration of this? Who wishes to speak? Mr Bryant?

Mr Michael Bryant (St Paul's): I think Mr Kormos is next in line.

The Chair: We would normally go to the Liberal side first, but it's up to you.

Mr Bryant: I understand the government has an amendment at some point. We can either deal with my amendment now or with the government's amendment.

The Chair: What is the wish of committee?

Mr David Tilson (Dufferin-Peel-Wellington-Grey): The amendment I will be proposing, subject to what happens here, comes a little later, in section 4. It's not this section.

The Chair: Actually, Mr Tilson, my understanding is that the committee was considering the amendment I read out, so we have to deal with that amendment before moving to another amendment.

Mr Tilson: I'm just responding to Mr Bryant; he's absolutely right.

Mr Bryant: Thank you, Mr Tilson. What we're debating here is the amendment to subsection 3(2), paragraph 7, and just to remind the committee, this was a Liberal motion tabled on November 9, the purpose of which was to get rid of what we are calling the Charlton Heston clause in the domestic violence protection bill.

The amendment reads, "I move that paragraph 7 of subsection 3(2) of the bill be struck out and the following substituted:" The new paragraph would read, "7. Requiring a peace officer to seize any weapons and any

documents that authorize the respondent to own, possess or control a weapon."

At the time, there was some concern expressed by the Ministry of the Attorney General to the effect that this amendment might be overly broad. I offered to amend it in a manner that met with those concerns, and along those lines drastically carved up the scope of my original amendment and said, "If you're worried about steak knives and other weapons being under the purview of a judge for the purposes of seizure, then I'll narrow my amendment to address that concern."

I don't regret it. It was really to make the point that it doesn't matter what I've tabled, the government is going to strike it down. The amended amendment said, "Fine, the judge can only seize firearms and not scissors and steak knives." Where did scissors and steak knives come in? That was sort of an ingenious argument forwarded by the parliamentary assistant, to the effect that weapons might be too broad and you might have people's weed-eaters being seized by judges. Beside the fact that it's incredibly unlikely a judge would do that, the real concern is whether or not people who have a history of violence and who qualify to be on the other end of an emergency intervention order or an intervention order should be able to keep their weapons, whether they be firearms, machetes or any dangerous weapons.

The provision as it now reads is if the abuser uses the weapon against the applicant—in other words, the domestic violence victim—or threatens to use the weapon against the domestic violence victim. Out of that grew a debate, and the Attorney General said in the House and outside in media scrums that having the threat there, having a provision that said if someone threatened to use a weapon opened up ample discretion to the judge to intervene.

Let me be clear that we're not debating the propriety of whether or not a judge should be able to use this legal tool to take weapons away from abusers. I think we should leave as much discretion as we possibly can with the judge. Why? Just look at the history of many of the instances of domestic violence that we've heard of through either a coroner's inquest or the Baldwin committee report, or through the submissions that were brought before the committee during the hearings.

Many domestic violence abusers can be quite cagey and get to know the law very well and skirt very close to the edge, knowing very well that if they cross that edge,

then they may find themselves subject to a restraining order. Many of them have restraining orders against them and it doesn't mean anything to them. That's why we had, tragically, as many deaths of family members as we did over the last summer. We learned that four more people have died since the domestic violence bill was introduced, brutal murders.

This is a matter that was brought to the Attorney General's attention last week in a meeting with a group of representatives of a coalition, and they also met with two other ministers in the government. They were not very happy with the meeting, but let's just leave that aside for now.

If a restraining order is not going to deter this person from proceeding with further violence, you've obviously got a real anarchy problem. We can pass laws. That's all we can do. We can try and make them as effective as possible. We can try and create as tough remedies as possible. Along those lines, is there a way to give judges tools so we can try and prevent violence?

Here's one: let's take away a weapon from somebody who might otherwise ignore a restraining order. It's one thing for them to ignore a restraining order; they can't ignore the fact that their weapons are being seized. They're gone. We were told during the committee hearings that most of these abusers who kill do use a weapon; some do not but many do. It defies reason to suggest that someone who's a known abuser—again, the judge makes this call. The judge looks at the circumstances and sees a pattern of violence. The person may start out with verbal threats and then actually start hitting her. The assaults become aggravated assaults. Then restraining orders come out and they ignore the restraining orders. Property is damaged. The kids are brought in. The kids are threatened. There are more restraining orders. Violence increases.

In these circumstances—this is not a hypothetical case; this happens all the time—this person should not have a gun in the house, however legally obtained and registered. Why? Because this is the kind of person, we know, who is probably going to take the next step in their pattern of domestic violence. Do we really want to take the chance that the person's a bad shot?

If the person threatens to use the gun, yes, then the current provision captures and gives the ability to the judge to seize the gun. What if the person knows very well that if he or she says, "I'm going to kill you," as opposed to, "I'm going to shoot you," he or she can keep his or her gun? What if we don't get to the point of the threat and the person just picks up the weapon and uses it? There are some things we can control and there are some things we can't. Sometimes we do all we can as legislators and we just can't prevent something from happening. But what about situations where we can, where we have a history of violence, where the judge makes that finding, and in the judge's discretion, "Let's remove the weapon?"

It's a fairly modest proposal I think, not a radical departure from the provision as it stands right now. Unfortunately some of the arguments made in defense of

the provision fall back on, with all due respect, stereotypes. The parliamentary assistant said, "That's not going to work in rural areas." Hindsight is 20/20. He might agree that that argument cannot possibly stand, for the simple reason that domestic violence in rural areas is as culpable as domestic violence in urban areas. We can't have a situation where because of a rural culture being more accustomed to having weapons—I'm not being critical of that—we should somehow turn the system on its head and not give judges the power to seize weapons, knives and guns, whatever it takes, to prevent the violence.

"OK," said the Attorney General and the Deputy Premier in question period, "how about this?" Mr Eves said on November 16 that under section 111 of the Criminal Code of Canada, a judge may "prohibit any accused abuser from possessing any firearms whatsoever." If that provision applied to Bill 117, then there would be no need for an amendment. That was the gist of the government's argument.

1600

There are a bunch of problems with this argument. Number one, I read the section of the Criminal Code, and under section 111, the applicant is a "peace officer, firearms officer or chief firearms officer." So there's problem number one, because under Bill 117 you don't need the police involved. The applicant would bring an application under this bill. That was part of the utility of the bill, we were told by the Attorney General, that you don't necessarily have to get the police involved. You can go, on your behalf, and bring an application yourself. So an application is brought by the victim and that victim doesn't need to have a police officer involved. That's problem number one. It's a big problem, because as we've heard time and time again in the committee hearings, the vast majority of domestic violence cases do not end up in the criminal justice system.

I've heard Minister Runciman express dismay over this reality. The gist of his argument was, "We can't accept that we need to get more women using the tools of the criminal justice system." I would love it if more women used the tools of the criminal justice system. But the problem with Mr Runciman's observation, and it may be shared by Mr Tilson and Minister Flaherty, is that it seems to be complaining about the weather.

The reality is that the vast majority of women are not turning to the criminal justice system. Perhaps if the domestic violence bill works more effectively they'll be more inclined to get more involved with public tools that are available. For now, that's just the reality and there are a number of reasons, some fair, some unfair, conclusions reached by these victims to the effect that the last place they want to go is to the police. Some of it is based on bad experience, maybe not the policeman's or police-woman's fault, maybe because of the result at the end of the proceeding, but in any event they don't.

Anybody who thinks domestic violence is going to be solved by police-related measures alone is really missing the point. You just don't get it, if that's the argument.

Your head's in the sand. We've got all the statistics. It's patently obvious that most are not turning to the criminal justice system. So section 111 is of no help whatsoever. That's problem number one with turning to section 111, that you need a police officer.

Here's the second problem: the whole point of Bill 117 was that you could get yourself before a justice of the peace 24-7, said the Attorney General. I don't think he ever said one-stop shopping, but the idea was that you could go before one judicial officer and get all the remedies you needed: the intervention orders, the emergency intervention orders, the order with respect to weapons, all the remedies set out in Bill 117. You go before one JP and off you go.

Here's the problem: section 111 does not permit you to go to a justice of the peace. It says right here that you have to bring him before a provincial court judge. Granted, arguably you could bring it before a provincial court judge under the domestic violence protection bill, except that if you look under the non-emergency intervention orders, as I understand it, and I can be corrected by counsel, you bring that before a Superior Court judge. Perhaps counsel can explain that a Superior Court judge could take that jurisdiction of a provincial court judge.

Let's be clear: section 111 of the Criminal Code says you need a "peace officer, firearms officer or chief firearms officer," and you have to bring it before a provincial court judge. There's a Supreme Court of Canada decision by Justice Sopinka that outlines a typical section 111 application. It's in a case called Zeolkowski. The judgment's in 1989. Obviously I'm not going to get into the case other than to describe what happened. It was a hearing before a provincial court judge in which Sergeant Edward Koch of the Winnipeg police department made an application under the Criminal Code for an order prohibiting the respondent from possessing any firearms or ammunition or explosives. The judge makes some constitutional findings and also has questions about evidence and hearsay and what works. The test under section 111 is not unlike the test under Bill 117.

The Chair: Mr Bryant, you have about two minutes.

Mr Bryant: My concern is that the whole point of Bill 117 was streamlined access to justice by the victims, that they could get themselves before a justice of the peace without a police officer, without a crown, bring that application and get that result. Section 111 doesn't address that; you need to get the police involved. Moreover, if they're going to make a section 111 application before a provincial court judge, that judge who's hearing the domestic violence application, either in the Superior Court or in the provincial court, is going to say, "What's going on in the other court?" More often than not the matter is going to be stood down because they want to hear what they're going to do on this ruling before they do something on that ruling. The victims themselves are going to be bogged down.

Rather than trying to make a painful effort to avoid adopting a Liberal amendment, why, oh why, would the government not simply give a similar tool to the judges

whom they want to empower to give orders under Bill 117? In other words, give the JPs and the Superior Court judges the power under Bill 117, subsection 3(2), paragraph 7, that you would get under section 111.

There's no rational argument why you would say the Criminal Code has a monopoly over this when you're trying to create remedies for victims under 117. You're making it harder for victims under 117. You didn't accept a single Liberal amendment, notwithstanding the suggestion by the parliamentary assistant that they were open to amendments. You wouldn't even accept an amendment to the amendment. It leaves me thinking that regardless of what the motives of the ministry are, it would appear you are digging in your heels and refusing to accept an amendment because it comes from the official opposition.

I would urge all committee members to think about what we are doing here. We are trying to give judges tools to prevent domestic violence. Why on earth we wouldn't give them this tool is beyond me, when this one could save lives.

The Chair: Mr Kormos.

Mr Peter Kormos (Niagara Centre): Thank you, Madam Chair. First, let me tell you that we understand you were unavoidably not here last time this committee sat on this. Your colleague did his best to fill your shoes, but we are glad you're back. He made his best effort, but you're the Chair. I appreciate that.

The first one doesn't speak to the—

The Chair: Mr Tilson, did you have a point or order?

Mr Tilson: No, I don't. I just wanted you to put me on the list to speak.

The Chair: Oh, sorry.

Mr Kormos: He was agreeing with what I said about the Chair. I hope he was.

I indicated, and I indicate again, that while I appreciate the amendment may not be worded as thoroughly as one might desire, take note and understand that the list of things enumerated in paragraphs 1 through 13 are things that a justice, a justice of the peace, a judge "may" include in an order. A justice, a justice of the peace, a judge isn't necessarily required to include any or all of those things, but is restricted to those things. That's number one.

Number two, clearly the government wanted to address the issue of firearms or else they wouldn't have included point 7. Chair, you should've been here. Mr Tilson was quick on his feet. He quickly pointed out that weapons could include anything from a baseball bat to a steak knife; a butter knife could be a weapon.

Heck, I bet you Mr Bryant has read case law where even some of the most innocent things have been converted to weapons by virtue of the intent of the possessor. I admit Mr Bryant isn't shaking his head furiously at me. This is for the purpose of things like assault by weapon. But that's not what the drafters of the legislation, and I'm sure that's not what the government, was thinking of, because when you take a look at paragraph 7, not only do they talk about weapons but then they go on to the

second subparagraph, "any documents that authorize the respondent to own, possess or control a weapon."

1610

Come on guys, clearly we're talking about firearms here. That's the only weapon I'm aware of that requires a document before you can obtain or possess it. You've got a whole list of—what do they call them, Mr Bryant?—prohibited weapons like nunchakus and brass knuckles. If Mr Bryant were consulted he would tell us those are prohibited weapons. You can't get a piece of paper to own those. They're not the sort of thing a judge has to rely upon Bill 117 to deny because they're *prima facie* illegal—boom, you haven't got a snowball's hope in Hades of ever getting permission to own those sort of things. There's a whole list of prohibited weapons, the list gets longer every year, and that's under the Criminal Code.

Although the word "weapons" is brought out to cover a wide range of things—knives, baseball bats, the whole nine yards—the people who wrote this, friends, were pretty clearly focusing on firearms or else they wouldn't have contemplated adding subparagraph ii to paragraph 7, making reference to documents that you need to either acquire or maintain your possession of it.

At the end of the day, although the section can include a broad range of things—as it should, because you don't want to restrict it to firearms because it would be silly for a respondent to say, "But I only beat my partner half to death with a baseball bat and all you can seize is firearms." That would be nuts. However, look at the reverse of that. What do they call that, the corollary of that? If the respondent similarly has beaten his wife half to death—I got an e-mail saying I shouldn't just be referring to wives. OK, I understand that, because this bill encompasses a broad range of violence that can occur in intimate and semi-intimate relationships. It could be sibling violence; I understand that.

To those people who wrote me e-mails saying, "Ah, but you didn't include cases of sibling violence," please, I understand that but when you get down to the nitty-gritty, you're talking about, by and large, women getting the daylight kicked out of them by men. Look, in any of the numerous cases where firearms have been used to shoot women to death, I'll bet dollars to doughnuts, here and now, and quite frankly the research confirms this, that wasn't the first time violence was used against a woman.

As a matter of fact, it's not hard to understand that the violence usually follows a pretty—this is oftentimes casebook kind of stuff. It starts with the verbal abuse and the control and then extends, and this has been the whole problem in dealing with this kind of violence. You even had some judges who were ranking the violence on a scale of 1 to 10 and trivializing, judges who would say, "Oh well, it was only a slap." Thank God we've moved beyond that point of view where we trivialize it and try to diminish it by saying, "But it was only a...."

The other reality is that in all the cases that most of us are aware of, almost inevitably you see the progression of

violence. Was the gun the first choice in terms of the first instance of violence? No, but—and Mr Bryant talks about—"You better miss," it almost inevitably is the final choice because it becomes the most deadly weapon. Yes, I can see it and I'm not quite as Allan Rock gun control as some of my colleagues are.

Mr Bryant: You're Anne McLellan on gun control?

Mr Kormos: No, I come from a mixed community of rural and urban. I also come from a community that has, as I suppose any other has, a huge component of both conservationists and hunters. I even think I belong, not surprisingly, to the Wild Turkey Federation, people who promote the hunting of wild turkeys. Of all the ones I should belong to, there you go. No wonder they gave me a guest membership; they knew what I did for a living.

These people are my friends, my neighbours. They are in my community. These people, by and large, are among the most responsible gun handlers in the community. They are not my first suspicion when I hear of a corner gas station being knocked over in an armed robbery late at night, or a corner store, where a firearm was used. They are not my first suspects, the people I know who are hunters and other outdoors people. So I'm not as rabid as some—I'm sorry, as determined as some.

But having said that, I do understand that there is no fixed profile of a woman-beater. Again, I appreciate that the bill covers women who beat men. We heard, blah, blah, blah, all about that. But there isn't a fixed profile. People who present themselves to their neighbours and to their family members and to their coworkers as perfectly rational, healthy people are among the people who perform serious acts of violence and/or who kill women: their spouses, their girlfriends etc.

I've got to tell the parliamentary assistant, I've talked to folks in the community and somehow people insist that they have watched segments of this committee debate, and watched it the last time we gathered, when the issue first came up. I've had people over the course of the weekends at home back down in Niagara say, "Please explain this," because the scenario, friends, is this: that a person, the respondent, can be portrayed—the one troubling thing about the judgment in the Zeolkowski case is the reference to the fact that section 111 could be very useful in cases of recurring violence. Now, let's be fair and indicate that that decision took place in 1989. But take a look at what's happening. Sopinka is a very experienced, highly regarded member of the bench, but there a Supreme Court judge is saying the prohibition on ownership of guns can be useful in recurring cases of violence. I'm not being critical of that judge, because, if anything, his comment probably reflected very much the attitude that prevailed even as recently as 1989 that somehow, after somebody has beat the daylight out of their spouse, girlfriend, wife, partner, then you might consider bringing an application.

The parliamentary assistant, the last time, tried his best. He raised the business of farmers, rural people, and their guns. They're not the target, but quite frankly, if a person who happens to own a gun or a rifle, a firearm,

because they live out in the country becomes dangerous to his spouse, they should be no more immune—because we're not talking about punishment here. This isn't a matter of punishment. Nobody is suggesting that, and I think the parliamentary assistant or any of his staff would be loath to say that parts 1 to 13 are punishment. No, these are preventive, these are prophylactic in their nature, which is what the whole bill is all about. It's about saving women's lives. None of this is penalties. None of this is punishment for what the perpetrator of violence may or may not have done, and it's not to be construed as that. I'll bet the bank that the first time a justice or a justice of the peace, what have you, makes comments that somehow indicate that he or she is imposing any of these conditions as punishment, the supervising court to which you make the application of appeal will jump all over that judge or justice of the peace.

I make it quite clear that these are not penalties. It never was the intention. It rotted my socks, it just blew me away, when I listened to the Deputy Premier of the day stand up in response to the question put to him and rely on section—what is it?—111. Please, read the act, read the Criminal Code. Of course I distributed copies of section 111 to all the press gallery immediately, because section 111 requires that an application be made that a date for a hearing be set. It is totally outside of the interests that are being addressed by this bill. Again, it is designed to be done very specifically by police, I must say, almost inevitably, through a crown attorney's office.

1620

I dare say, the police would be loathe to embark on one of these applications without involving the crown's office and involving the crown attorney. I'm suggesting that, other than some very remote areas where a crown attorney may not be available—even then the police would be reluctant—we're talking about involving crown's offices.

One of the problems is that our provincial courts are backlogged. For the purpose of this argument, I'm not going to get into a partisan argument blaming anybody at this point. Provincial judges are backlogged. You take your place in line when it comes time for an application like that to be made. Quite frankly, it is too late by the time the attempted murder or, indeed, homicide charge has been laid because the firearm was in fact used.

The Liberal amendment that we are debating is worded in such a way—"Requiring a peace officer to seize any weapons and any documents that authorize the respondent to own, possess or control a weapon"—that I believe a JP, judge, justice, what have you, can say, "Part of, all of, none of the weapons." In other words, it isn't some sort of blanket seizure of all weapons. Part of the argument, as I recall it, from the parliamentary assistant was that you wouldn't want a blanket seizure of weapons. That would mean the old steak knife. Is that *reductio ad absurdum*? I think it might be. We are going to take the steak knives? No. Please. Let's not get silly about this. It is serious business.

The amendment puts a JP, judge—look at the incredible pressure. There are going to be real issues arising. This stuff is going to be litigated, no two ways about it. Superior courts are going to be supervising the JPs etc. I suspect it'll be a relatively speedy process if they start refining the standards and exactly what the bill means. They're going to be setting down guidelines. But look at how we are handcuffing the justice of the peace, who can sit there as a good JP, as a competent JP, as a committed and diligent JP, who can hear evidence that satisfies that JP to the standard established in the bill, maybe even satisfies him or her beyond the balance of probabilities, almost to the point where there's no doubt that you've got some guy who has demonstrated a pattern of escalating violence.

The evidence in front of that JP is also that this guy not only subscribes to all—have you seen those magazines?—the gun collector magazines. I'm not talking about the turkey hunters' magazines or the outdoors people's magazines; I'm talking about the gun magazines, the American ones. Take a look at some of those someday. There's pretty wild stuff in terms of the content and in terms of some of the types of people who have a fascination with these magazines.

They are not talking about how to reblue grandpa's old shotgun; they're talking about how to take military-style automatic weaponry and high-power weaponry and either convert it so you just skirt around the law, be it in the United States or Canada, or so that you convert it notwithstanding the law, be it in the United States or Canada. We are not talking about magazines that are catering to nimrods; we are talking about magazines that are catering to people who have an obsession with firepower.

One of the things the police are particularly concerned about—look at the pressure the police are under. They've received a call for assistance with respect to a guy who has become increasingly irrational and violent. They think, "That's the one whose victim we took in front of a JP a month ago. She testified, and he didn't rebut or in any way reject the evidence that this guy has half a dozen handguns, high-powered rifles, sights"—not for hunting deer; for hunting people—"and we've got to go to that call and try to bust this guy for breaching his Bill 117 order?" You've got a couple of cops in a cruiser sure as heck wishing that this bill had given the JP the power, not necessarily to order but so that the JP may order that that respondent surrender that arsenal. It is appealable. There's no two ways about it.

Right here we are talking about, "with notice to the respondent," so the respondent has every capacity to make his or her case in front of the presiding judge. That just boggles the mind, that the government members won't cede that the amendment here is a fair one and an appropriate one and one that will protect women and protect cops. If this bill is going to do anything, it should be doing that.

The argument about intruding on criminal turf is baloney, because there is no punitive element in any of

this. This isn't punishment. Nobody is talking about anybody committing an offence and being punished by having their weapons forfeited. That's done in a criminal court. I understand that; all of us, I think, by this point, do. But we are talking about giving a JP the power to keep women alive and, yes, to keep cops alive.

The Police Association of Ontario, when they lobbied here, found it incredible that the bill is written the way it is and that a JP couldn't order forfeiture of firearms or surrender of firearms. They found it incredible. The same police association lobbyists that I spoke with found it incredible that the motion moving the amendment wasn't accepted, especially when I told them that we had agreed to defer this matter for a week or two, however long you want, because if the government wasn't happy with the exact wording of the Liberal amendment, let the government write its own, with its own staff. The police association lobbyists I talked to thought it was nuts that this wouldn't be a part of this bill. I find this a very troubling exercise, when a government has decided somehow to dig its heels in on this particular amendment. I've spoken to others, and there's more to come, but it's extremely troubling.

I feel almost creepy in terms of suggesting that this may haunt this committee at some point in the relatively near future. I hope to God that never comes true, but also knowing what's going on out there, having a reasonably good sense of what's going on in terms of violence against women and the fact that firearms are the weapon of choice when it comes to shooting a woman, I'm afraid that with the predictability of the extreme omission here in paragraph 7 it is pretty sound that we are going to see a case in short order where a woman-beater is allowed to keep his arsenal because his lawyer says, "No, Judge, you've got to read the bill. You can only order that gun forfeited if my client used it to threaten his wife, and he just beat the crap out of her with his fists and his boots." He never threatened to shoot her; he just threatened to kill her while he was pounding her to the ground with his fists and then stomping on her with his boots. It is a sad omission, friends.

1630

Mr Tilson: Just to respond to my friends Mr Kormos and Mr Bryant, of course, the last time this committee met was two weeks ago. This amendment, of course, has been taken to our caucus and we have spent some time dealing with this issue. We have treated it very seriously.

The issues of this bill, when we're concerned with the different types of applicants, as has been reiterated, which comes under section 2—I won't repeat them. There are five different categories. I would agree with my friends that the bulk of them would be violence by men against women, but not necessarily so. There are a number of situations where there might be different categories of domestic violence. When that occurs as defined by the act, there are two areas, two occurrences. One is outlined in section 4, which talks about an emergency intervention order. An emergency intervention order can be granted by a justice or a designated judge, which is a justice of the peace.

The second way, of course, is a more permanent—and just returning to section 4, that can be done *ex parte*; that can be done without notice. That application can be made from sections 1 through 7 of subsection 3(2). One of them, of course, is the issue that's before the committee now as requiring a police officer to seize weapons. There are other items which the designated justice can look at. Just taking one at random, the very first one, the justice can stop the respondent from attending at or near or entering any place that is attended regularly by the applicant. Going on further, they must stay away from the applicant's residence. There are others, 8 to 13, where it must be made by a justice under section 3. So it's not just section 7; these are different suggestions that could be made.

I might add that I don't want the committee to lose sight of the fact that weapons can be permitted through this legislation, this Domestic Violence Protection Act, or through the Criminal Code. My friends have referred to section 111 of the Criminal Code, which the Deputy Premier referred to in response to a question. I haven't read this Zeolkowski case, although I notice from the annotation in the Criminal Code that it was decided under the predecessor of section 111, so that may or may not mean anything.

I also want the committee to look at section 117.04. That section talks about an application for a warrant to search and seize. I'm going to read portions of it. This is section 117.04(1) under the Criminal Code:

"Where, pursuant to an application made by a peace officer with respect to any person, a justice is satisfied that there are reasonable grounds to believe that it is not desirable, in the interests of the safety of the person or any other person, for the person to possess any weapon, prohibited device, ammunition, prohibited ammunition or explosive device," the justice may issue a warrant authorizing a peace officer to search for and seize any such thing and any authorization, licence or registration certificate and so on that is held by or in the possession of the person.

Then it goes into the actual seizure. The peace officer can seize these things without a warrant. You don't even need a warrant under subsection (2). I won't quote the first three lines, but it says, "the peace officer may, where the grounds for obtaining a warrant under subsection (1)," which I just read, "exist but, by reason of a possible danger to the safety of that person or any other person, it would not be practical to obtain a warrant, search for and seize any such thing, and any authorization, licence or registration certificate" and so on.

Under section 3 or section 4 of the act that we're dealing with, the applicant or a peace officer must go to a designated judge or a justice in the case of section 4, and a justice in the case of section 3. Under 117.04(2), the police officer can act right there and then. If the peace officer thinks there's something very seriously going on in that crisis that he's in, he doesn't even have to get a warrant. That's under the Criminal Code of Canada. My understanding is that normally you look at that section first.

Then you look at section 111, which has been quoted, I believe, where the peace officer and others can apply to a provincial judge to prohibit a person from having certain weapons, and it goes on. That section's been quoted. So you look at both those sections. I've distributed an amendment, which could be made later—it doesn't really apply to this section—which I hope my three friends in the opposition will agree is a compromise, because we want this bill to pass, as they've indicated they want it to pass too. Domestic violence is a real problem, and if we get stuck on this thing, it's not going to pass. I guess I want to assure the members of the committee that when you look at this, at the protection that's being offered under the Criminal Code, section 117.04(2) goes even further. You don't even need a warrant.

Mr Bryant has talked about that the applicant may not be a police officer, and that's quite true. However, that applicant must go—whether it's under an intervention order or whether it's under an emergency order, you've got to go to a judge. You've got to go to a designated judge or you've got to go to a judge; it doesn't matter. So I don't understand, quite frankly, the rationale, whether it's the applicant or whether it's the peace officer.

Mr Kormos made the comment, "Well, you know, we're really thinking of firearms." No, we're thinking of all weapons. Yes, I'm going to refer to section 2 of the Criminal Code, which defines weapons—which we've referred to in this bill—which means anything. It could be absolutely anything. No, I'm not being silly when I talk about the seriousness if there are dangerous weapons in a house, that this bill, the Criminal Code, applies to all weapons.

We're serious about domestic violence on our side. I believe the opposition is too. I would hope they would allow this to go through. We have spent a great deal of time in our caucus, we've spent a great deal of time in this committee, on this particular section. My records show that last week, Madam Chair, there were over 30 minutes spent by Mr Kormos debating it. Mr Bryant and Mr Kormos have each spent 20 minutes today. I don't know how long I've spent. But I believe we've debated this as far as we would go and I would ask that the question be put. I move that the question be put.

Mr Kormos: Chair, if I may, I'll be asking for a recorded vote and I will be requesting a 20-minute adjournment pursuant to the standing orders.

The Chair: Mr Tilson has moved that the question be put.

Mr Kormos: A recorded vote. And a 20-minute adjournment, please.

The Chair: We'll deal with the recorded vote first, Mr Kormos.

Mr Kormos: If I may, Chair, we have the adjournment as of right before the vote.

The Chair: Yes. I understand that.

Before we put the question, I just want to read the following. Before we proceed to the vote on the closure motion I would like to clarify for the committee the im-

plications of the motion at hand. Standing order 47 states, "A motion for closure ... shall preclude all amendment of the main question." It further states that if it is passed, the original "question shall be put forthwith and decided without amendment or debate."

The motion currently under consideration, ie, subsection 3(2), paragraph 7—there are further amendments to this section which have been filed. The interpretation of the term "main question" as set out in the standing orders and in our precedence is that the question is on the section as amended to this point and not on the amendment under consideration, nor on any amendments which have yet to be moved. I would make it clear to all members that if the closure motion carries, it will mean that the next question put would be, "Shall section 3 carry?" Understood? OK.

Mr Kormos has requested a 20-minute recess and we will put the question when we return.

The committee recessed from 1642 to 1701.

The Chair: Mr Kormos has requested a recorded vote of the time allocation motion.

Ayes

Beaubien, Elliott, Molinari, Tilson.

Nays

Bryant, Gravelle, Kormos.

The Chair: That carries.

Shall section 3—

Mr Kormos: Chair, a recorded vote, and I'm requesting a 20-minute recess as per the standing orders.

The Chair: We will have a 20-minute recess.

The committee recessed from 1702 to 1721.

The Chair: Shall section 3 carry?

Ayes

Beaubien, Elliott, Molinari, Tilson.

Nays

Bryant, Gravelle, Kormos.

The Chair: That carries.

Section 4.

Mr Marcel Beaubien (Lambton-Kent-Middlesex): Chair, I request a one-minute recess.

The Chair: We have a motion. Are you moving a one-minute recess?

Mr Kormos: A recorded vote; 20-minute recess please.

Mr Tilson: On a point of order, Madam Chair: I don't believe that was a motion. I think it was a request.

The Chair: I don't believe that the request for a one-minute recess or a 20-minute recess really helps the pro-

ceedings of this committee. We're going to proceed to section 4.

Mr Kormos: This is the part of the bill where I have some questions that, with the co-operation of staff, I'd like to put to them. Once again, as I understand, this is the emergency—if I could ask the staff, please: how do they contemplate people will be pursuing these emergency orders, to wit, with or without counsel? There was a suggestion—

Mr Tilson: On a point of order, Madam Chair: My understanding is that in the proceedings before us now there is one motion the committee has received notice of and that is by Mr Bryant. Isn't it more appropriate that Mr Bryant read his amendment and we debate on that amendment as opposed to—

The Chair: If that's what committee would—

Mr Tilson: But Mr Kormos is jumping right into something else.

The Chair: No. Mr Tilson, I did suggest that we move to section 4. Mr Kormos, if you would prefer that Mr Bryant read the amendment, we will deal with the amendment.

Mr Kormos: My apologies, ma'am. Quite appropriate. I will be speaking to his amendments.

The Chair: That's fine. Mr Bryant.

Mr Bryant: I move that subsection 4(1) of the bill be struck out and the following substituted:

"Emergency intervention order

"(1) On application without notice to the respondent, the court or a designated judge or justice may make an emergency intervention order if the court or designated judge or justice is satisfied on a balance of probabilities that the matter must be dealt with on an urgent and temporary basis and that,

"(a) domestic violence has occurred; or

"(b) a person or property is at risk of harm or damage."

I'll speak to this now.

This speaks to an issue we touched on in a previous section. It attempts, instead of having three hoops to jump through before an emergency intervention order be provided, that we consolidate the self-evident criterion, which is "that the matter ... be dealt with on an urgent and temporary basis" for the protection of the "person or property" that "is at risk of harm or damage." If the government wants to propose an amendment to amend my amendment—I put it under subsection (1) for the simple reason that any emergency intervention order is only going to be sought where there is an emergency. It didn't make sense to me and I was concerned that when you add a third prong to a test, you always end up putting the other two prongs out of context, when in fact the whole point of an emergency intervention order is to consider the urgent basis of the order and the temporary basis of the order. It would go without saying that it was urgent and temporary, so I didn't understand why that would be the third hoop that had to be jumped through.

But the more important and substantive change is back to this point: in circumstances in which there is a balance

of probability that a matter must be dealt with on an urgent and temporary basis, I don't think we should have to wait for domestic violence to have occurred. I don't know if this was the intention of the government, to be reactive to domestic violence. I've made that charge generally, but quite specifically with respect to this section I don't quite understand it. Generally speaking, the approach I've been advocating has been one of prevention, and I have said, with all due respect, that the approach of the government seems to be solely reactive.

Leaving aside that general charge, in this particular provision under this particular measure it is unfortunate that the government has, in my view, only gone halfway. This is an opportunity to go that step further. We are talking about a very small part of dealing with domestic violence. This bill isn't dealing with second-stage housing. This bill isn't dealing with all those emergency measures that have been called for by the Baldwin committee report. It is only dealing with the criminal justice side. So given that we're only dealing with a small component of preventing domestic violence, my point is, let's at least within this component actually prevent it.

In many ways my concern with this provision is similar to my concern with the previous amendment, and that is, why is it that we have to wait until an offence has occurred before the government is willing to step in and apply these orders? Again, this is an emergency intervention order. These are urgent circumstances and the evidence is before the judge. The judge is not going to just take somebody's word for it. Evidence is going to have to be adduced by the applicant, and if it can be established on a balance of probabilities that the matter is an urgent one, then let's prevent the domestic violence from occurring.

Now, if it has occurred, then clearly we know from not only the committee hearings, which were all too short I think for everybody's liking, especially given the perspectives that were provided—it seemed not enough victims were heard from. We heard a lot from men who were protesting about a gender-neutral piece of legislation. In any event, we have heard time and time again—at least I have heard time and time again and I'm sure the Attorney General heard this as well in his meetings of last week with the coalition—that once there is a pattern of domestic violence, it just gets worse in the absence of some interventions to try and turn things around and make them better.

So if the point here is to intervene, then fine, yes. If domestic violence has occurred and you're appearing before a judge, it's too late, unfortunately, to get the emergency intervention order. Again, as legislators, we can do all we can to try and prevent this violence. At least let's intervene on that basis. But on top of that, there is a second prong that must be established before an emergency intervention order may be within the discretion of a judge and that is if also a person or property is at risk of harm or damage. I'm obviously suggesting that the criteria be in the alternative; not together, but in the alternative.

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Again, we've already established that it is an emergency. We've already established, on a balance of probabilities, that the matter must be dealt with on an urgent basis. If in fact domestic violence has occurred, surely that's enough evidence for a judge to intervene. I mean, how many times do we have to wait before we intervene? But again, while yes, there's a preventive aspect to that because you're preventing further violence, you're not stopping the domestic violence before it can start. I know that the vast majority of domestic violence cases see recidivism in the civil context and the criminal context, but that said, surely we should give judges the tools to intervene in circumstances when domestic violence has not yet occurred. How would we do that? We would permit an urgent temporary emergency intervention where a person or property is at risk of harm or damage.

I have no doubt that there may be means under the Criminal Code to obtain an order to try and intervene where a person or property is at risk of harm or damage. The Advocates' Society and the Canadian Bar Association basically made submissions to the effect that yes, there is, and as a result there are jurisdictional problems with this act and with this section. I am not concerned with that at all.

I am concerned that this has not been run through the section 91-92 wringer to make sure that it is as constitutionally sound as possible so that victims of domestic violence don't end up having to foot the bill for the better drafting of this act. I am concerned about that and that's why I object to rushing through this process. We might as well get it right, in other words, because if we have judges striking down and carving up the provisions, it is going to be at the expense of victims. They're going to be the ones footing the bills because they're the applicants under this act.

Leaving that aside, imagining that this is constitutionally sound—and I want to proceed on that basis because I have confidence in the counsel who's before us that they have put it through the 91-92 wringer; I'm concerned that the CBA and the Advocates' Society think otherwise. Regardless of that, why not give a judge a tool to intervene on an emergency basis if a person is at risk of harm or damage? To me, that seems like a modest amendment, does not seem like a radical departure from what the government purports to be doing in this bill and under this section. To establish that both domestic violence has occurred and that there is risk of harm and damage means that we are back to the business of reacting.

If the government wants to say to me, "Sorry, official opposition, but that's just not going to pass constitutional muster," then I would love to hear those arguments. The same may have been true of the previous amendment. If the intellectually honest argument is that this is not constitutionally sound, the Liberal amendment then and the Liberal amendment now, then I'd love to hear that. But I have not heard that.

With respect to the Charlton Heston clause, I heard, "Well, you can use section 111 of the Criminal Code."

The answer, as you've already heard, is that you can't in the same way. A police officer is not the same as an applicant, and getting a police officer involves a whole new procedure. Maybe most importantly with respect to 111, you're going to have bifurcated proceedings. The whole point of Bill 117 was that we were going to have one proceeding. We were going to go to court, go to the JP or the provincial court judge or the Superior Court judge and get an order, not to several different courts. Here, the government's answer is to go back to several different courts, raising jurisdictional problems.

The parliamentary secretary has said, "I don't understand." It concerns me that he says he doesn't understand why we wouldn't just accept 111, because it would suggest to me that he doesn't understand that the vast majority of domestic violence victims do not get themselves involved with the criminal justice system and, as a result, the police are not going to get involved.

"No," they said, "let's wait until they threaten to use the weapon or use the weapon." As far as I'm concerned, although it is roughly equivalent, it's the same rationale here in this section. Why are we waiting for domestic violence to occur before we're imposing this emergency intervention order? Why are we waiting, if there is a finding that a person or a property is at risk of harm or damage and there's an emergency? If a civil libertarian in this room wants to add some additional checks on that to ensure it's not overly broad, obviously we're open to that. Nobody here has, I hope, a monopoly over legislative drafting. I'm suggesting that as it stands right now this provision really isn't going to do much at all to prevent domestic violence until after it has occurred.

Lastly, we've had this debate *mutatis mutandis* with the previous provision, and here we are back with it again. I look forward to hearing from Mr Kormos as to whether he still thinks the Liberal amendment would be overly broad or otherwise unworkable, and I'd be happy to entertain any amendments to this. But why are we throwing so many hoops in front of a judge? Why are we not just giving judges the tools they need to prevent domestic violence?

Mr Kormos: The amendment is interesting, because it's consistent with the amendment that was proposed to section 3. However, we should all take a close look at the drafting of the bill, because you'll note that section 4 is not drafted in the same way as section 3. Section 3 clearly says "and" between paragraphs (a) and (b). The "and" is omitted in section 4. The only "and" is between (b) and (c).

Far be it from me to suggest I know anything about statutory interpretation, but I recall it having been suggested to me that in terms of the interpretation, if you have similar sections like 3 and 4, you put them side by side, and if one omits something the other has, clearly it means something other than what the other says. So it seems pretty clear: the objection around section 3 was the "and," clearly a conjunctive "and" as compared to the exegetical "or" suggested by Mr Bryant for section 3. The conjunctive "and" is there; it's omitted in section 4.

I then suggest there will be some counsel who will be arguing that the omission of “and” in section 4 in fact means “or,” because “and” is included in section 3 but not in section 4. The only “and” in section 4—clearly the requirements (a) and (b) are conjoined with that the matter must be dealt with promptly on an urgent and temporary basis. The “and” is there, and it’s arguable that the “and” applies both to (a) and (b).

I’m saying that even if this amendment doesn’t pass, the drafters of the bill have created something in section 4 that is distinct from section 3. Section 3 clearly has an “and” between paragraphs (a) and (b), conjoining them. In other words, both those tests have to be met before the court can acquire jurisdiction. The omission of “and” in section 4 implies that it’s some test other than the test in section 3, and that it’s going to be very open. Do you understand what I’m saying? I welcome counsel to argue that the omission of “and” means it doesn’t mean the same thing as it does in section 3, where clearly both have to be met before the court acquires jurisdiction. The only thing that is compulsory, the only thing that’s conjoined in section 4 is that the matter must be dealt with speedily and hastily, that there is a sense of urgency.

Having said that, Mr Bryant’s amendment clarifies that and puts it in a specific way. Without Mr Bryant’s amendment it remains ambiguous, especially in the absence of any amendment from the government. The government isn’t moving to amend it to include “and,” so frankly, no matter which way you cut it, you’ve created an interesting opportunity here for applicants to meet a lower test, which we argued on behalf of with respect to section 3, and which really, when you get down to it, would have been as suitable in section 3, because there you’re not dealing with an ex parte hearing, you’re not dealing with a hearing without notice.

One of the problems is that I recall asking early on, when the bill was first being dealt with by this committee some time ago, about balance of probabilities versus—because we are also dealing with that in subsection 1—reasonable and probable grounds. They are two different phrases. Interestingly, Zeolkowski deals with that distinction as well.

1740

The Criminal Code test is “reasonable and probable grounds to believe.” The court goes on to say that the purpose of the court hearing is to determine whether or not there were objective grounds upon which to base reasonable and probable grounds, but then goes on to say—what that does, then, is make the trier, the judge, have to determine whether, on a balance of probabilities—part of that suggests to me that Sopinka is using “reasonable and probable grounds” and “balance of probabilities” as the same thing. Although I’m hard-pressed in view of what very well learned and experienced staff had to say when someone suggested what was my suspicion, that there’s got to be something distinctive, one versus the other, they could well in fact be the same thing.

The incredible problem, in the absence of a clear “or,” is that an applicant can establish that domestic violence

has occurred. Again, granted, these are undefended. These are ex parte. There’s not likely to be somebody there on behalf of the respondent raising stumbling blocks or hurdles for the applicant, but you can have conscientious judges, JPs and justices on their own saying, “Well, this is...,” because it is a little bit extraordinary.

As I understand it, judges exercise that much more caution when doing an ex parte because of course the respondent isn’t there, one, to defend himself or herself from the allegations, nor is the person there to make submissions about the type of order that would be appropriate, appreciating that the order under section 4 is somewhat more limited than the order under section 3 because it doesn’t contain the last six points, 8 through 13, that are contained in section 3; specifically, granting the applicant exclusive possession. In other words, exclusive possession can’t be granted under an emergency order.

It is interesting that you stopped at paragraph 7 and didn’t go on to paragraph 8, because exclusive possession—I suppose you would deal with it with an earlier “restraining the respondent from attending at or near.” In other words, if you wanted to get a violent person out of the same household, you could use paragraph 1, because exclusive possession—and granted, exclusive possession would be the sort of stuff that is dealt with in family court applications, where you’ve got not just ordering an abusive or violent person to stay away but actually giving some sort of tenure to the other party, to the applicant.

I can anticipate conscientious JPs, judges, justices, without the “or” and with nobody to suggest that by the omission of “and,” the government really means “or”—which is what I suspect. If that’s not the government’s intention, then the government should be amending this section. If they want to persist, if they really don’t agree, they should either be adopting Mr Bryant’s position or they should be bringing their own amendment to place the word “and” after “(a) domestic violence has occurred.”

Ms Anne-Marie Predko: Would you like a response to that?

Mr Kormos: No. In around 12 minutes I’ll be asking for the response. The Chair will let me know when I’m due for a response.

Mr Beaubien: What did Bob Rae call you once?

Mr Kormos: Oh, and he was dead on. Yes. That’s one thing I agree with him on.

It is troubling because the approach when this bill was introduced—and again, understand that it was received positively by both opposition parties, who were pleased that the government was going to provide a speedy process whereby—and again, I appreciate it; I’m in the same boat as Mr Tilson. To all those people who want to object, yes, from time to time there will be applicants for these types of orders who are men. But the bottom line is that most of the applicants are women. It’s women who are getting killed; it’s women who are getting the daylight beaten out of them, not once in a while, but the sort of women—because the other argument is true. The

woman who's going to come forward as a result of an act of violence, you can bet your boots that it is probably not the first time she's been assaulted, threatened, beaten, or had coercive means used against her by way of trashing her property, what have you.

This is where the government starts to stray from that. We all adopted the premise that this was going to provide a way where you get enforceable orders. The argument was that the other orders weren't being enforced. What the government's trying to do is design an order that the police can use the Criminal Code to enforce. It doesn't address the matter of availability of police officers. It doesn't address the matter of the willingness of police services boards to get involved in what will still be perceived by many of them as a civil procedure.

How many times have any number of people around this table in this committee, gotten the call, be it at 11 at night or at 3 in the morning, from somebody who's called the police in an effort to have the police intervene? I say, "Put the police officer on the phone." The police officer legitimately, genuinely, is saying, "Well, look, I don't know. It's a civil order. I'm not going to put my career at risk. I'm not sure whether I can or not." Quite frankly, notwithstanding the section here that directs police to comply with these, I've heard the same thing. These aren't police officers who are derelict in their duty; they are just uncertain about what their jurisdiction is, what their powers are and whether they are putting themselves and their police services board at risk by going where they shouldn't.

The mere fact that the bill says "police officers shall" isn't going to change the tone. Police officers are used to dealing with criminal law. That's been part of the problem. Police officers don't like enforcing custody orders or access orders, especially ambiguous ones. All of us have gotten calls from non-custodial parents—the absent parent—who have called on the police to enforce the access order because their partner won't release the kids to them on that Saturday or that Sunday. We understand the police are not going to—"Go back to court and apply for your contempt citation," which is a lengthy, drawn-out process.

By leaving the legislation as it is, friends, you're maintaining a very ambiguous and confusing standard or test. You can resolve it either by accepting the Bryant amendment, which clearly says "or," or, if you persist in saying that even on the emergency, even on the ex parte, the application without notice, the justice of the peace or judge—in view of the fact that their powers are seriously restricted merely to imposing conditions from paragraph 1 through to paragraph 7, if you really believe that a lesser standard than what is in section 3 is appropriate, which appears to be what you're saying—that's how it appears to be drafted, with the "and" that's contained in section 3.

The problem as well is that the regulatory power—I've moved ahead several sections in the bill—doesn't appear to make regulations that are going to be of any assistance to a JP, judge or justice down the road. The JP,

judge or justice, because there's no regulatory power included in the bill that appears to address this issue, is going to be left on his or her own. JPs, judges and justices are independent. They are not bound by policy directives from the government. Policy directives don't count. As a matter of fact, a JP, judge or justice would probably be out of line or out of order if they were to allow a policy directive to guide them in applying any legislation, because that would imply, among other things, political interference. It would be a direct attack on the independence of that particular member of the judiciary.

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Mr Bryant: Don't offend the Chair.

Mr Kormos: I'm not offending the Chair.

Interjection.

Mr Kormos: I'm sorry. All of us have our own views on that. I'm an advocate of judicial independence, and I think we have been well served by it. Just take a look, for a brief second—

Interjection.

Mr Kormos: I'm sorry, ma'am?

The Chair: So am I.

Mr Kormos: Just take a look at what has happened in the United States, where you've now got lawyers deciding who the next President is going to be, and you have the dilemma of saying, "He or she is a Republican judge," or "He or she is a Democratic judge." Look at the problems that creates.

Mr Beaubien: They should get Canadian judges.

Mr Kormos: For the first time this afternoon Mr Beaubien raises his voice. No, he made a motion for a one-minute adjournment a while ago.

Mr Beaubien: I didn't.

Mr Kormos: Well, I heard the crack of the whip and you quickly decided that that was not going to be a motion, with the subsequent vote.

But, once again, they should get Canadian judges. We've got a judiciary that works very hard and, as you know, Mr Beaubien, has actually litigated to defend its independence, both justices of the peace and provincial judges. I'm not sure whether federally appointed judges have done the same in terms of litigating, but the JPs and provincial judges—it's interesting that only those with provincial appointments have had to litigate to protect their independence. Far be it from me to suggest that in itself implies anything.

I want to make it clear that I support the amendment. I think the amendment does not alter the intent of the legislation but merely clarifies it. I think the intent is clear, as it's written now, that that is to be an implied "or," that there is an exegetical relationship between paragraphs (a) and (b), that a justice of a peace, a judge or a justice can choose one or the other as compared to what is clearly the intent in section 3, where the person has to meet both hurdles.

The problem is that a woman, in this case, can establish that domestic violence has occurred—again, let's recall what Mr Justice Sopinka said in *Zeolkowski*.

He was dealing with the section 111 reasonable and probable grounds, which appear to be capable of being transferred over to the standard here on the balance of probabilities. He had to determine whether there were objective grounds, objective reasons by which that police officer had reasonable and probable grounds to form his fear about that person—in other words, the respondent in that application—possessing firearms. Here the applicant not only has to establish that she—in this case she—has been a victim of violence but that she is at risk of harm or damage.

The converse could equally be true. A person may not yet have been—and the problem goes back to the fact the government refused, in its definition of domestic violence, to say “includes.” I read some of the submissions that had been made in writing, and some of them hit the nail right on the head when they said, “Putting ‘means’ and making that less restrictive, making it exhaustive, was a terrible mistake.” Some of those submissions—they were delivered to all the members of the committee from some very legitimate groups that have a strong interest in protecting women against violence—said, “Don’t say ‘means,’ say ‘includes.’” Without the word “or,” once a judge, a justice or a JP goes through that list and cannot find that the conduct fits squarely within that definition of domestic violence, it’s over. It’s not open to that justice, JP or judge to consider whether a person or property is at risk of harm or damage as a result of anything that may have happened.

That’s not to say a judge or a justice would impose the same order or the same terms in the order if only one were found to be the case as compared to both or the other. Clearly the judge is being called upon to use his or her discretion to tailor, to design an order that fits the circumstances of the case but very clearly has as its end, as its sole objective, the protection of the woman who is the applicant. If that’s what this is all about, then let’s treat this seriously.

I entered this committee process, and even the introduction of the bill, with great enthusiasm. I find my enthusiasm waning as the bill becomes subject to more and more thorough scrutiny. I want to hear government members agree to support the amendment that is on the table.

Mr Tilson: I must say I’m disappointed that we are almost at the end of this day of this committee. This is

the second day of the committee, when all House leaders agreed that not only would the bill be supported by all three sides—the three members have indicated they would support the bill—but these clause-by-clause discussions would end not today but two weeks ago. Now we risk the whole existence of the bill. In my view it runs the risk of not passing as a result of those delays.

The government will not be supporting this amendment, basically for the same reasons it didn’t support the amendments to subsection 3(1). We don’t support this amendment because it removes from the test the requirement that domestic violence has occurred. A finding of domestic violence is the backbone of this proposed test.

Without the requirement that domestic violence has occurred, any risk of harm or damage to a person or property would be sufficient to trigger an emergency intervention order as long as the judge or justice was satisfied that the matter was urgent. The three-part test, which my two friends have spent some time on, is a necessary step in doing two things: it balances swift protection of the victim with due process of the person bound by the order.

Mr Kormos has spent a great deal of time with respect to the grammatical difference between sections 3 and 4, whether the word “and” should or should not be there. Frankly I don’t see the problem. I think anyone who has gone through grammar school would understand that. I know I shouldn’t be saying it like that, but I’m going to ask the legislative counsel to give her comments.

Ms Susan Klein: I think it’s standard Ontario drafting practice that when there is a series of clauses, the conjunction only appears between the last two. The difference between sections 3 and 4 is that subsection 3(1) has two clauses and subsection 4(1) has three. The “and” between (a), (b) and (c) applies to all three. It implies (a) and (b) and (c).

Mr Kormos: I appreciate that interpretation. Of course it remains to be seen what prevails.

The Chair: Mr Tilson has the floor.

Mr Tilson: The opposition can continue with delaying tactics on this bill. I simply hope they’ll let us vote on this amendment now. It’s not a motion; it’s just a hope they will let us do that.

The Chair: Well, the debate can continue, but it’s six o’clock, so I’m going to have to adjourn the meeting.

The committee adjourned at 1800.

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Journal des débats (Hansard)

Mardi 28 novembre 2000

**Standing committee on
justice and social policy**

Social Housing Reform Act, 2000

**Comité permanent de la
justice et des affaires sociales**

**Loi de 2000 sur la réforme
du logement social**

Chair: Marilyn Mushinski
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Tuesday 28 November 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Mardi 28 novembre 2000

The committee met at 1535 in room 151.

SOCIAL HOUSING REFORM ACT, 2000

LOI DE 2000 SUR LA RÉFORME
DU LOGEMENT SOCIAL

Consideration of Bill 128, An Act respecting social housing / Projet de loi 128, Loi concernant le logement social.

The Chair (Ms Marilyn Mushinski): I call the meeting to order. Good afternoon, ladies and gentlemen. This is a standing committee on justice and social policy meeting to discuss clause-by-clause consideration of Bill 128, An Act respecting social housing.

Mr Brian Coburn (Ottawa-Orléans): I believe we have unanimous consent to stand down sections 1 to 124 to deal with the motion on subsection 125(4), (4.1) and (5) and then return to section 1.

The Chair: Is there unanimous consent? Agreed.

Then we'll go to section 125. There is an amendment. The amendment needs to be read into the record.

Hon Tony Clement (Minister of Municipal Affairs and Housing): Madam Chair, if I could have the floor, with your indulgence.

The Chair: Minister Clement.

Hon Mr Clement: I believe I'm moving at committee that subsections 125(4) and (5) of the bill be struck out and the following substituted:

"Same

"(4) The minister shall pay to the DSSAB service manager, in accordance with the regulations.

"(a) the amount apportioned to the territory without municipal organization under subsection (1), and

"(b) the amounts prescribed for the purposes of subsection 122(2) that are incurred or to be incurred by the DSSAB service manager in respect of housing programs prescribed for the purposes of subsection 117(1) with respect to a municipality that is deemed to be territory without municipal organization under a regulation made under subsection (6).

"Same

"(4.1) If an amount paid under subsection (4) includes estimates of costs still to be incurred.

"(a) the DSSAB service manager shall pay to the minister, in accordance with the regulations, the amount by which the estimates of costs still to be incurred exceed the actual costs, and

"(b) the minister shall pay to the DSSAB service manager, in accordance with the regulations, the amount by which the estimates of costs still to be incurred are less than the actual costs.

"Recovery of amount

"(5) The amount apportioned to the territory without municipal organization under subsection (1) may be recovered by the crown from persons living in the territory, except those living in a municipality deemed to be a territory without municipal organization under a regulation made under subsection (6), in the same manner as taxes imposed on property under the Provincial Land Tax Act."

The Chair: Any debate?

Mr John Gerretsen (Kingston and the Islands): Can we have an explanation of that? What's the purpose of it?

The Chair: Who wishes to speak to that? Mr Coburn.

Mr Coburn: Actually, this is the correct provision regarding territory without municipal organization and refers particularly to Moosonee so they can in fact get paid in a timely fashion.

Mr Gerretsen: Thank you.

The Chair: Any discussion? All in favour of the amendment? Opposed? That carries.

We'll deal with section 125. Shall section 125, as amended, carry? All in favour? Opposed? That carries.

Now we go back to section 1.

1540

Mr David Caplan (Don Valley East): Just a question. Some of the amendments that have been introduced are duplicated, and I wonder if there's an appropriate time to advise you that we'll withdraw them. Should we do that now or should we do that when we come to them?

The Chair: We should do it when we get to it.

Section 1, a Liberal motion.

Mr Caplan: I move that the act be amended by striking out "tenant" wherever it appears and substituting, in each case, "tenant or member."

The Chair: Any discussion? All in favour of the amendment? Opposed? It does not carry.

Mr Gerretsen: Just a point of clarification: is the minister a voting member of this—

The Chair: My understanding is that he is a voting member. We have received a sub slip.

Mr Gerretsen: He's been subbed in?

The Chair: He's been subbed in.

Liberal motion, number 2.

Mr Gerretsen: If he didn't vote, it means it was three to three, Madam Chair.

Interjections.

Mr Gerretsen: Oh, he voted late.

The Chair: Liberal motion number 2.

Mr Caplan: I move that section 1 of the bill be struck out and the following substituted:

"Purpose

"1. The purpose of this act is to provide for the efficient and effective administration of housing programs by service managers and the efficient and effective operation and management of housing projects by self-governing community-based housing providers."

The Chair: Shall the section carry? All in favour? Opposed? That does not carry.

NDP motion number 3.

Ms Frances Lankin (Beaches-East York): I move that section 1 of the bill be struck out and the following substituted:

"Purpose

"1. The purpose of this act is to provide for the efficient and effective administration of housing programs by service managers and the efficient and effective operation of housing projects by self-governing community-based housing providers."

I believe this is verbatim and therefore should be withdrawn.

The Chair: That's withdrawn.

Government motion number 4.

Interjection.

The Chair: Sorry. We need to vote on section 1. So many amendments.

Interjection.

The Chair: Committee members, could you give me a moment, please. We just need to figure out these various sub slips as to who's voting and who isn't.

Mr Gerretsen: So the minister was subbed in—

The Chair: He was subbed in.

Mr Gerretsen: —for about two minutes and—

The Chair: Actually, he's been subbed in until 4 o'clock is my understanding.

Mr Gerretsen: Well, then, who is not eligible to vote till 4 o'clock?

The Chair: Hang on. We're trying to figure that out.

Mr Gerretsen: Thank you.

Mr John O'Toole (Durham): Am I correctly subbed on?

Clerk of the Committee (Mr Tom Prins): For only two minutes.

Mr O'Toole: For two minutes? No, I've been subbed on for the afternoon. I could be wrong.

Interjections.

The Chair: Sorry, committee members. We're going to take a two-minute recess to sort this out. There is some confusion as to exactly who has been subbed on. The clerk needs to know that.

The committee recessed from 1544 to 1547.

The Chair: Mr O'Toole, Mr Coburn, Mr Barrett and Mr Clark are the committee members. So we will go back to section 1.

Interjection.

The Chair: We have to do section 1 before we can move to section 2. We need to vote on section 1.

Shall section 1 carry? All in favour of section 1? Opposed?

Mr Gerretsen: That's lost. There was only one who voted.

Mr O'Toole: Madam Chair, I did not hear the question being called. Was it "as amended" or was it—because we have amended section 1.

The Chair: No.

Interjections.

Mr O'Toole: There was a government amendment that was adopted in section 1, if I'm not—

The Chair: No.

Ms Lankin: Only one government member has voted.

The Chair: I think we will take the vote again.

Ms Lankin: Madam Chair, to be reasonable here, I understand that it's unfortunate if committee members are not paying attention. But I have sat on bills at other occasions when key clauses that the government wanted were defeated because members weren't paying attention. I don't understand why at this point in time we would afford an opportunity for a revote.

The question was clearly asked. You specifically indicated that there were no amendments to section 1 and, "Shall section 1 pass?" Unfortunately for the government at this point in time, only the parliamentary assistant voted; in the opposition, three members of committee voted. The vote is three to one opposed. So I don't understand how we can revisit the vote.

The Chair: OK. We'll move to section 2, government motion number 4.

Mr Coburn: I move that the definition of "non-profit housing co-operative" in section 2 of the bill be struck out and the following substituted:

"'non-profit housing co-operative' means a non-profit housing co-operative under the Co-operative Corporations Act."

The Chair: All in favour of that motion? Opposed? That carries.

Liberal motion number 5 on section 2.

Mr Caplan: I move that the definition of "non-profit housing co-operative" in section 2 of the bill be struck out and the following substituted:

"'non-profit housing co-operative' means a non-profit"—I'm sorry. That is verbatim of the last one; I withdraw that one. My apologies.

The Chair: Withdrawn.

Government motion number 6 on section 2.

Mr Coburn: I move that the definition of "special-needs housing" in section 2 of the bill be struck out and the following substituted:

"'special-needs housing' means a unit that is occupied by or is made available for occupancy by a household having one or more individuals who require accessibility

modifications or provincially funded support services in order to live independently in the community.”

The Chair: All in favour of that? Opposed? That carries.

Liberal motion number 7.

Mr Caplan: I withdraw, Madam Chair.

The Chair: Liberal motion number 7 is withdrawn.

Government motion number 8.

Mr Coburn: I move that section 2 of the bill be amended by adding the following definition:

“‘supportive housing provider’ means a housing provider providing special-needs housing in a housing project operated by it.”

The Chair: All in favour of that? Opposed? That carries.

Liberal motion number 9.

This is a new section, 2.1. So we’ll actually vote on section 2.

Shall section 2, as amended, carry? All in favour? Opposed?

That carries.

New section 2.1, Liberal motion number 9.

Mr Caplan: I move that the bill be amended by adding the following section after section 2:

“Non-application

“2.1 This act ceases to apply to a housing project when it is no longer subject to a mortgage guaranteed by the province of Ontario or the Ontario Housing Corporation or a mortgage guaranteed or held by the government of Canada or the Canada Mortgage and Housing Corporation.”

The Chair: All in favour of that motion? Opposed? That does not carry.

Moving to section 3. There are no amendments for section 3. Shall section 3 carry? All in favour? Opposed?

That carries.

Section 4. Shall section 4 carry? All in favour? Opposed?

That carries.

Subsections 5(4) and (5), Liberal motion number 10.

Mr Caplan: I move that section 5 of the bill be amended by adding the following subsections:

“Duty to consult

“(4) Before exercising any power or performing any duty under this act that would have a material effect on the operating practices of a housing provider or the duties of a housing provider under this act, a service manager shall consult with the housing provider.

“Same

“(5) Without limiting the generality of subsection (4), a service manager shall consult with each affected housing provider before the service manager,

“(a) submits a transfer plan to the minister under section 1;

“(b) establishes a local eligibility rule under section 71;

“(c) establishes a local occupancy standard under section 72;

“(d) establishes a local priority rule under section 73, or

“(c) establishes a local standard under section 89.”

The Chair: All in favour of that amendment? Opposed? That does not carry.

Liberal motion number 11.

Mr Caplan: I move that section 5 of the bill be amended by adding the following subsections after subsection 5(5)—I guess that should be renumbered because the last one fell:

“Consultation with housing providers

“(6) Before exercising a power under this act or the regulations that would affect in a material or substantial way a housing provider’s operating practices or a housing provider’s obligations under this act or the regulations, a service manager shall consult with the housing provider.

“Same

“(7) Without limiting the generality of” the previous subsection “before establishing a local eligibility rule under section 71, a local occupancy standard under section 72, a local priority rule under section 73 or a local standard under section 89, a service manager shall consult with every housing provider who may be affected by the rule or standard.”

It seems pretty reasonable.

The Chair: All in favour of that amendment? Opposed? That does not carry.

Shall section 5 carry? All in favour? Opposed? That carries.

Moving to section 6, government motion number 12.

Mr Coburn: I move that section 6 of the bill be amended by adding the following subsection:

“Additional powers, municipal service manager

“(1) The provision of residential accommodation by a municipal service manager under this act shall be deemed to be a municipal purpose of that service manager, and a municipal service manager may exercise for the purposes of this act the powers that it has as a municipality under the Municipal Act, the Regional Municipalities Act or any other general or special act.”

The Chair: All in favour of that motion? Opposed? That carries.

Shall section 6, as amended, carry? All in favour? Opposed? That carries.

Shall section 7 carry? All in favour?

Mr Caplan: Could we do 7 through 11?

The Chair: Yes, if that’s how you want to deal with it. Shall sections 7 through 11 carry? All in favour of sections 7 through 11? Opposed? Those sections carry.

Shall section 12 carry? All in favour? Opposed? That carries.

Members of committee, if you don’t put your hands up it is very difficult for me to see whether you’re voting or not. I would ask you, please, to make sure you do.

Section 12.1, a Liberal motion.

Mr Caplan: I move that the bill be amended by adding the following section after section 12 and before the heading “Performance of Duties”:

"Responsibilities of housing provider

"12.1 Despite anything in this part or in part V, a housing provider operating a housing project is responsible,

"(a) for all rent collection matters in respect of the housing project; and

"(b) for entering into an agreement with a household occupying a unit in the housing project for the repayment of rental arrears if a service manager has determined that the household has paid an amount of geared-to-income rent that is less than the amount of geared-to-income rent payable by the household."

Mr Coburn: For (b), I have, "for entering into an arrangement".

Mr Caplan: Oh, I'm sorry. I'll reread that.

"(b) for entering into an arrangement with a household occupying a unit in the housing project for the repayment of rental arrears if a service manager has determined that the household has paid an amount of geared-to-income rent that is less than the amount of geared-to-income rent payable by the household."

The Chair: All in favour of that amendment? Opposed? Do you agree? All agreed? That carries. Section 12.1 has carried.

Section 13. Liberal motion number 14.

Mr Caplan: Are you going to do section 13 first and then 13.1?

The Chair: This is part of 13. Subsection 13(1.1).

Mr Caplan: OK. I move that section 13 of the bill be amended by adding the following subsection:

"Consultation

"(3.1) Before approving the plan, the service manager shall consult with all affected housing providers in its service area."

The Chair: Just for clarification, after "Consultation" you said "(3.1)." I'm assuming you mean (1.1)?

Mr Caplan: No.

The Chair: You said, "Before approving" rather than "Before submitting."

Mr Caplan: It's actually (3.1). I had asked the clerk if we needed to have any kind of unanimous consent. It's slightly different from what appears here. It was just a minor technical amendment. Do I need to seek unanimous consent to do that?

Interjection.

Mr Caplan: OK. Why don't I do it this way? We had agreement to make a change to this amendment, so I seek unanimous consent.

Mr Coburn: This is 13(3.1)?

Mr Caplan: Yes.

Mr Coburn: Not 13(1.1)?

Mr Caplan: It just changes—

The Chair: This is Liberal motion 14.

Mr Gerretsen: Yes. It comes right after.

Mr Coburn: I don't have number 14. It's subsection 13(3.1).

Mr Caplan: It was (1.1). It got changed in the—

Mr Coburn: You streamlined it.

Mr Caplan: We agreed on a streamlined approach.

Sorry about that. I talked to the clerk about it before. I didn't think I had to change that. I'll seek unanimous consent to change the number—

The Chair: Legislative counsel actually has a question on it, so I think we'll—

Ms Joanne Gottheil: I just need a few minutes.

The Chair: We'll take a recess and get it copied.

The committee recessed from 1603 to 1611.

The Chair: We're back in session. We are at Liberal motion number 14, which will now be read by Mr Caplan.

Mr Caplan: We'll try this again, Madam Chair, and I apologize for the confusion.

I move that section 13 of the bill be amended by adding the following subsection:

"Consultation

"(3.1) Before approving the plan, the service manager shall consult with all affected housing providers in its service area."

Interjection.

Mr Caplan: Oh, should we have done the other one first?

The Chair: If you could just confirm that you've withdrawn the other one.

Mr Caplan: I've withdrawn (1.1).

The Chair: That was previously 13(1.1).

Mr Caplan: Yes. That's withdrawn.

Mr Brad Clark (Stoney Creek): Subsection 13(2.2)? Are we out of order now?

The Chair: No. This is an amendment. We'll vote on the amendment and then we'll go back to the clause as amended.

Mr Clark: So 13(3.1). Thank you.

The Chair: Does everybody understand what they're voting on?

Mr Coburn: The amendment.

The Chair: The amendment. All in favour? That carries.

We also have number 15, which is a Liberal motion. That's in your original package.

Mr Caplan: I move that section 13 of the bill be amended by adding the following subsection:

"Same

"(2.2) The plan must provide for a consultation process, to take place before the effective date of the transfer of responsibility to the service manager under section 10, among the service manager and all of the housing providers in its service area who are affected by the transfer of responsibility regarding the allocation of the responsibilities set out in part V."

The Chair: All in favour of that amendment? Opposed? That does not carry.

That's section 13. Shall section 13, as amended, carry? All in favour? Opposed? That carries.

Section 14. Shall section 14 carry? All in favour? Opposed? That carries.

Section 15, Liberal motion number 16.

Mr Caplan: I move that subsection 15(1) of the bill be amended by inserting after "any person" in the second line "including a housing provider."

The Chair: All in favour of that amendment? Opposed? That does not carry.

Shall section 15 carry? All in favour? Opposed? That carries.

Section 16. Shall section 16 carry? All in favour? Opposed? That carries.

Section 17, Liberal motion number 17. Just a moment now.

Mr Caplan: I'll withdraw the one that's in the package and I'll substitute the one that has been provided.

I move that section 17 of the bill be amended by adding the following subsection:

"Notice to housing provider

"(2.1) When the service manager gives the minister written notice that a housing project is in difficulty as a result of a situation described in clauses (2)(a), (b), (c) or (d), the service manager shall also give the housing provider operating the housing project written notice that the housing project is in difficulty, unless there are circumstances contributing to the situation that have been referred to a law enforcement agency."

The Chair: All in favour of that amendment? Opposed? That carries.

Shall section 17, as amended, carry? All in favour? Opposed? That carries.

Can we deal with sections 18 to 21? Oh, did somebody say 19?

Mr Coburn: Sections 18, 19 and 20.

The Chair: We'll deal with sections 18 to 20. Shall those sections carry? All in favour? Opposed? Sections 18 through to 20 carry.

Section 21, Liberal motion number 18.

Just a moment, that falls after 21, so we need to do 21. Sorry.

Shall section 21 carry? All in favour? Opposed? That carries.

Now we'll deal with 21.1. Liberal motion.

Mr Caplan: I move that the bill be amended by adding the following section after section 21 and before part III:

"Indemnity to housing provider

"21.1. A service manager shall indemnify each housing provider operating a housing project in its service area for any loss incurred by the housing provider as a result of the decision made or actions taken by the service manager negligently or in breach of this act or the regulations in performing its duties or exercising its powers under this part."

Perfectly reasonable.

The Chair: Shall section 21.1 carry? All in favour? Opposed? That does not carry.

Sections 22 and 23. Shall sections 22 and 23 carry? All in favour? Opposed? They carry.

Section 24. That's a government motion.

Mr Coburn: I move that subclause 24(1)(a)(iv) of the bill be struck out and the following substituted:

"(iv) a non-profit housing corporation that is incorporated under section 13 of the Housing Development Act and that is controlled by the related service manager or a related municipality; and"

The Chair: All in favour of that motion? There's no one opposed? That carries.

Government motion number 20.

1620

Mr Coburn: I move that subclause 24(2)(a)(iv) of the bill be struck out and the following substituted:

"(iv) a non-profit housing corporation that is incorporated under section 13 of the Housing Development Act and that is controlled by the related service manager or a related municipality; and"

The Chair: All in favour of that motion? Opposed, if any? Carried.

Shall section 24, as amended, carry? All in favour? Opposed? That carries.

Section 25. Government motion number 21.

Mr Coburn: I move that clause 25(b) of the bill be struck out and the following substituted:

"(b) a non-profit housing corporation that is incorporated under section 13 of the Housing Development Act and that is controlled by the related service manager or a related municipality."

The Chair: All in favour? Opposed? It carries.

Government motion number 22.

Mr Coburn: I move that section 25 of the bill be amended by adding the following subsection:

"Arrangement

"(2) Despite clause 2(3)(a) of the Business Corporations Act, a local housing corporation may amalgamate with a corporation described in clauses (1)(a) or (b) by way of an arrangement described in clause 182(1)(d) of the Business Corporations Act."

The Chair: All in favour of that amendment? Opposed? Carried.

Shall section 25, as amended, carry? All in favour? Opposed? That carries.

Section 26. Government motion number 23.

Mr Coburn: I move that paragraph 4 of section 26 of the bill be struck out and the following substituted:

"4. A non-profit housing corporation that is incorporated under section 13 of the Housing Development Act and that is controlled by the related service manager or a related municipality."

The Chair: All in favour of that amendment? Carried.

Shall section 26, as amended, carry? All in favour? Opposed? It carries.

The Chair: Do you want to consider sections 27 through 30 as one? All in favour? Opposed? They carry.

Subsection 31(7). Government motion number 24.

Mr Coburn: I move that section 31 of the bill be amended by adding the following subsection:

"Extended application

"(7) If a local housing corporation to which a housing project was transferred by a transfer order transfers the housing project to an entity mentioned in paragraph 3 of subsection 49(2), this section applies as between the

related service manager and the entity with respect to that housing project."

The Chair: All in favour of that amendment? Opposed? Carried.

Shall section 31, as amended, carry? All in favour? Opposed? That carries.

The next amendment is to section 36, so we'll go from 32 to 35. Shall sections 32 to 35 carry? All in favour? Opposed? They carry.

Section 36. Liberal motion number 25.

Mr Caplan: I move that section 36 of the bill be amended by adding the following subsection:

"Exception, employees

"(2.1) Despite subsection (2), when a transfer order specifies the date on which a transfer of employees takes effect, it shall specify a date that is later than the date the transfer order is made."

The Chair: All in favour of that motion? Opposed? That does not carry.

NDP motion number 26.

Ms Lankin: I move that section 36 of the bill be amended by adding the following subsection:

"Same, employees

"(2.1) For the purposes of the transfer of an employee, the effective date of the transfer order is the employee's last date of work for the local housing authority."

The Chair: All in favour of that motion? Opposed? It does not carry.

Shall section 36 carry? All in favour? Opposed? It carries.

Shall section 37 carry? All in favour? Opposed? It carries.

Section 38. Government motion number 27.

Mr Coburn: I move that clause 38(1)(b) of the bill be amended by striking out "section 35" at the end and substituting "this act."

The Chair: All in favour of that motion? OK.

Section 38. Government motion number 28.

Mr Coburn: I move that subsection 38(3) of the bill be struck out and the following substituted:

"Exception, personal property

"(3) Despite subsection (1), the Lieutenant Governor in Council shall not make an order rescinding a transfer order that transferred personal property that is subject to a security interest or amending those provisions of a transfer order that relate to a transfer of such personal property, on or after the date on which the secured party,

"(a) registers a financing change statement or financing statement in respect of the transferred personal property under the Personal Property Security Act that makes the transferee the debtor of record under that act; or

"(b) takes possession of the transferred personal property."

The Chair: All in favour of that amendment? That carries.

Shall section 38, as amended, carry? All in favour? Opposed? That carries.

Shall sections 39 to 41 inclusive carry? All in favour? Opposed? They carry.

We're now at section 42, and we have government motion number 29.

Mr Coburn: I move that paragraph 2 of subsection 42(1) of the bill be amended by adding the following subparagraph:

"iii.1 specifying the date on which the transfer took effect, as set out in the transfer order."

The Chair: All in favour of that? Opposed, if any? That carries.

Government motion number 30.

Mr Coburn: I move that section 42 of the bill be amended by adding the following subsection:

"Purpose of form 1

"(4.1) The purpose of the registration or deposit of a form 1 under subsection (1) is solely to give notice to the public of the transfer by transfer order of the real property identify in the form."

The Chair: All in favour of that motion? That carries. Government motion 31.

Mr Coburn: I move that section 42 of the bill be amended by adding the following subsection:

"Deeming re Planning Act

"(4.2) If the document required by subsection (1) is registered or deposited under the Registry Act or registered under the Land Titles Act, the document shall be deemed, for the purposes of the Planning Act, to be a deed or a transfer, as the case may be, containing the statements described in clauses 50(22)(a), (b) and (c) of the Planning Act."

The Chair: All in favour of that motion? Carried.

Shall section 42, as amended, carry? All in favour? Opposed? That carries.

Section 43. Government motion 32.

Mr Coburn: I move that section 43 of the bill be amended by adding the following subsection:

"Re-perfecting security interest

"(2.1) A security interest that becomes unperfected under subsection (1) may be perfected again by registering a financing change statement under the Personal Property Security Act at any time during the remainder of the unexpired registration period of the financing statement or any renewal thereof."

The Chair: All in favour of that motion? It carries.

Shall section 43, as amended, carry? All in favour? Opposed? That carries.

Shall section 44 carry? All in favour? Opposed? That carries.

Section 45. Government motion number 33.

1630

Mr Coburn: I move that section 45 of the bill be amended by adding the following subsection:

"Same

"(6.1) No order of the court is necessary for an action or other proceeding to be continued under subsection (6).

"Same

"(6.2) The title of an action or other proceeding that is continued under subsection (6) shall be amended in

accordance with the written notice of the minister in all documents issued, served or filed in the action or proceeding after the effective date of the transfer.”

The Chair: All in favour of that amendment? It carries.

Shall section 45, as amended, carry? All in favour? Opposed? That carries.

Section 46, government motion number 34.

Mr Coburn: I move that subsection 46(1) of the bill be struck out and the following substituted:

“Representation, etc, by transferor

“(1) Despite any other act, a transferor does not make any covenant, representation or warranty, and no covenant, representation or warranty on the part of the transferor shall be implied or deemed to have been made, in respect of any asset, liability, right, obligation or employee transferred from the transferor by the transfer order.”

Ms Lankin: I just wanted to indicate on this amendment that the interpretation I’ve received indicates it would strengthen the provincial government’s defence if municipalities sued because housing assets were in poor condition, despite any other act. For that reason, I’ll be voting against it.

The Chair: OK. All in favour of that motion? Opposed? That carries.

Shall section 46, as amended, carry? All in favour?

Opposed? That carries.

Ms Lankin: It was a tie vote, Madam Chair.

The Chair: I had assumed that it carried. So we’ll take the vote again.

Ms Lankin: The clerk saw, Madam Chair.

The Chair: Shall section 46 carry?

Ms Lankin: Madam Chair, the clerk saw and reported to you that only three government members voted and three opposition members voted.

Mr O’Toole: I did vote.

Ms Lankin: You did. Mr Barrett didn’t vote. Mr Barrett can confirm that he didn’t vote on that motion.

The Chair: OK. Section 46 loses.

Ms Lankin: In a tie you’ve got to vote, Madam Chair.

Mr Gerretsen: You have to vote on it, Madam Chair.

The Chair: Oh, I have to vote.

Ms Lankin: Then there’s the precedent in terms of how the Chair must vote.

The Chair: I voted against the amendment, so it loses.

Mr Coburn: Madam Chair, if that’s the case, then the first one that was deemed not to have been lost—with respect, the Chair should have voted on that one. It was tied 3-3.

Mr Gerretsen: It’s too late now.

Mr Coburn: No, it isn’t. We want to be consistent with the regs here.

Mr Gerretsen: Consistent? Your government consistent?

Ms Lankin: I thought that was 3-2.

Mr Coburn: It was 3-3.

The Chair: It wasn’t a tie.

Ms Lankin: That was 3-2. The first one wasn’t a tie.

Mr Caplan: You didn’t have everybody here.

The Chair: OK. There is a little confusion here. If you will permit me one minute to consult with the clerk, please.

Members of committee, we have to go back to section 46.

Interjection.

The Chair: OK. I need another minute.

1640

Members of the committee, I do beg your indulgence. There was some confusion, and because of that I would ask that we take the vote over again.

Ms Lankin: I would understand if you were asking for unanimous consent for the Chair’s vote to be reconsidered, given your confusion as to whether it was an amendment or a section. But I would not give unanimous consent to revert to a vote of the whole committee.

The Chair: OK. Do I have unanimous consent for the Chair to take the vote again?

Mr Caplan: For the Chair to vote again?

The Chair: Yes.

Mr Caplan: Agreed.

The Chair: On the section.

Ms Lankin: As amended.

The Chair: As amended. I will be voting in favour of the section, as amended.

Ms Lankin: Just for the understanding of people observing the process, it is parliamentary tradition that the Chair votes to keep a section alive that the House has voted on in second reading. The matter will go back to the House. If the House is of a different opinion, it can correct it by taking it into committee of the whole. That is the reason the Chair is doing this, and not out of her own opinion with respect to the section. Am I correct?

The Chair: You’re absolutely correct, Ms Lankin, and I do appreciate that clarification.

Mr Gerretsen: That’s not the way I understood it.

The Chair: You can make all your decisions when you chair a committee in camera.

Mr Gerretsen: Thank you very much.

Mr Clark: Madam Chair, I seek unanimous consent for Garfield Dunlop to be subbed in for Carl DeFaria at 5 pm for the remainder of the day. Currently, Mr O’Toole is here.

The Chair: Is there unanimous consent? Do I have unanimous consent? Agreed.

Ms Lankin: That’s the only one you get today.

Interjections.

The Chair: I should also get unanimous consent from members to pay attention, especially the government side.

Mr Clark: On a point of order, Madam Chair: Going back to section 1, when I first came in and was subbed on, the normal protocol I have experienced in committees as the question is called is, “Does the section carry?” I stated, “Carried.” You were taking a hand vote, and you stated that it was declined. That’s what happened when I first came in.

Interjections.

Mr Clark: With respect to the opposition, at the moment, I'm talking. That's what happened at the very beginning, Madam Chair, and I'm just asking what the process is, in terms of looking at exactly what happened in Hansard, so we can clarify this section and how the vote transpired. With the votes I've experienced, normally it starts with a voice vote and then they take the other vote.

The Chair: No, not on clause-by-clause consideration.

Ms Lankin: I just want to indicate to Mr Clark that when he reviews Hansard his memory may be refreshed that as he came in and was about to sit down, he did actually raise his hand. Because at that time I commented to him: did he know what he was voting on? That was not the exact section that was defeated.

Mr Clark: Madam Chair, she is absolutely correct. It was the next section and the next vote. The question was, "Does it carry?" I stated, "Carried." I didn't raise my hand to vote. I stated, "Carried," and that's why I'm asking for clarification and that we look at Hansard.

The Chair: For clarification, I did ask that you all raise your hands so I could clearly see if you were voting.

Mr Clark: You may have done it at the beginning of the meeting. I wasn't here at the beginning of the meeting.

The Chair: No, I didn't do that at the beginning. I assumed you knew what the rules were in terms of voting.

Mr Clark: I follow the rules as they are followed in other committees. That's why I'm raising this point, Madam Chair.

Ms Lankin: It's OK, Brad, you weren't the only one who didn't raise your hand. It's a moot point.

The Chair: The motion lost because you didn't put your hand up. You did not vote on it.

Mr O'Toole: I agree there was a significant amount of confusion. It's clear that the government was going to support its own purpose clause. That's clearly understood. This is a government committee.

My question is: is it mandatory that we have to have a raised hand vote? I am questioning the clerk, not you. Like Mr Clark said, I believe a voice vote is normally how I have voted in committees—"Agreed," and that's the end of it. If there is some dispute, there's a recorded vote or something like that. So I question not you but the clerk, and I want a ruling on that from the clerk, not from the Chair.

Ms Lankin: It's already been ruled on.

Mr Caplan: The Chair ruled.

Mr O'Toole: I want the clerk's interpretation of that. Through the Chair, to the clerk: is it the custom that it's usually a voice vote?

Clerk of the Committee: The Chair has made a ruling.

Mr O'Toole: And the Chair is ruling that it must be a hand vote.

The Chair: Mr O'Toole, please don't get into an argument with the clerk. Go through the Chair.

Mr O'Toole: I have.

The Chair: I have made a ruling on this matter.

Mr O'Toole: Who did?

The Chair: I have made a ruling on this matter—

Mr O'Toole: I just want that for the record too. That's important.

The Chair: —and I have already specifically stated to every member of committee to please make sure you raise your hand so I can see that you are voting.

Mr O'Toole: Chair, I am not disagreeing with you and I am not being belligerent, but I have not heard that instruction until now. I have heard, "Raise your hand," but I have not heard it as an instruction to the committee. So there was confusion at the beginning, as Mr Clark has pointed out and as I have pointed out. I was subbed on, and I am not used to voting by raising my hand. Normally it's a voice vote and that's the way it goes, unless it's a recorded vote.

Mr Gerretsen: For the record, Madam Chair, it was not the first item we voted on in this committee. The very first item we voted on was the Liberal amendment dealing with the definition of a tenant or member. That was the very first section, and then we started with number one.

Ms Lankin: In the interest of being accurate, we actually voted on section 125 first.

Mr Gerretsen: Yes.

Mr O'Toole: I think the point has been made that really the best intentions here were that members of the government would have supported the government purpose clause. Would you agree to that?

Mr Gerretsen: I don't know. You're all individual members here. Maybe you had some reason for not supporting it. I don't know.

The Chair: If we have unanimous consent, you could go back and do the vote again.

Ms Lankin: Perhaps when we get to the end of this, we might have a discussion, as long as Mr O'Toole stays to the very end of this.

Mr Gerretsen: He's not going to be here to the end.

Ms Lankin: I know. I just wanted to ruin the rest of his day. If John stays right to the very end, I'll give unanimous consent to go back to that section.

The Chair: Members of committee, you all seem to be co-operating quite nicely. I suggest we go back to section 47.

Mr Caplan: Sections 47 and 48?

The Chair: Can we do a vote on 47 and 48 inclusive? Shall they carry? All in favour? Opposed? They carry. Section 49. We have government motion number 35.

Mr Coburn: I move that subparagraph 3 iv of subsection 49(2) of the bill be struck out and the following substituted:

"iv. a non-profit housing corporation that is incorporated under section 13 of the Housing Developing Act and that is controlled by the related service manager or a related municipality."

The Chair: All in favour of that?

Interjections: Carried.

The Chair: All in favour of that?

Mr Toby Barrett (Haldimand-Norfolk-Brant): We said, "Carried." Did you want a hand vote?

The Chair: I want a hand vote for everything, please. Opposed? That carries.

Section 49. Government motion number 36.

Mr Coburn: I move that subsection 49(5) of the bill be struck out and the following substituted:

"Evidence

"(5) A statement described in subsection (3) that is included in a document registered or deposited as described in that subsection shall be deemed to be conclusive evidence of the facts stated in it."

The Chair: All in favour of that motion? Opposed? That carries.

Shall section 49, as amended, carry? All in favour? Opposed? Carried.

Shall section 50 carry? All in favour? Opposed? That carries.

Section 51. NDP motion number 37.

Ms Lankin: I move that paragraph 1 of subsection 51(8) of the bill be amended by striking out "the employee shall be deemed to have resigned from employment" in the second and third lines and substituting "the employment of the employee shall be deemed to have been terminated."

1650

The Chair: All in favour of that motion? Opposed? That does not carry.

Liberal motion number 38; Mr Caplan.

Mr Caplan: I move that subsection 51(8) of the bill be amended by:

"(a) striking out paragraph 1; and

"(b) amending paragraph 2 by striking out 'For the purposes of the Employment Standards Act, the employment of the employee shall be deemed to have been terminated by the local housing authority' at the beginning and substituting 'For the purposes of the Employment Standards Act, an employment contract or a collective agreement, the employment of the employee shall be deemed to have been terminated by the local housing authority.'"

The Chair: All in favour of that motion? Opposed? That does not carry. Is it a lot of effort for you to raise your hand, Mr O'Toole?

Interjection.

The Chair: NDP motion number 39; Ms Lankin. This is on subsection 51.

Ms Lankin: It's a government motion number 39 first.

The Chair: No, not according to my—I have NDP motion number 39, dealing with 51(9), paragraph 2.

Ms Lankin: OK, I have them in reverse order. Mr Coburn, just to understand the next motion that the Chair has, which is government motion number 40, as I understand it, deals with paragraphs 2 and 3 of subsection 51(9) of the bill. Is that correct?

Mr Coburn: Yes.

Ms Lankin: And it's your intent to pass that?

Mr Coburn: Right.

Ms Lankin: OK. Can I indicate then that NDP motion 39, which has the same effect as the government's motion dealing with employee benefits, will be withdrawn on the word that the government's motion will be carried.

The Chair: That's fine.

Then we'll move to government motion number 40, Mr Coburn.

Mr Coburn: I move that subsection 51(9) of the bill be amended by:

"(a) striking out paragraph 2; and

"(b) amending paragraph 3 by striking out 'except those mentioned in paragraph 2.'"

The Chair: All in favour of that motion? Opposed? That carries.

Then we have NDP motion number 41, subsection 51(9).

Ms Lankin: I move that paragraph 3 of subsection 51(9) of the bill be amended by adding the following sentence at the end:

"However, each transferred employee is entitled to receive a severance payment in an amount that is not less than the amount to which he or she is otherwise entitled under the collective agreement, if any, that applies with respect to the employee at the time of the transfer."

The Chair: OK, all in favour of that motion? Opposed? That doesn't carry.

We have Liberal motion number 42, Mr Caplan.

Mr Caplan: I move that subsection 51(9) of the bill be amended by adding the following paragraph:

"13.1 Subparagraphs 13 i, ii and iii also apply if a grievance is filed by or on behalf of a transferred employee after the effective date of the transfer and concerns the employee's rights or entitlements against the transferor."

The Chair: All in favour of that motion? Opposed? That doesn't carry.

Ms Lankin: Madam Chair?

The Chair: Sorry, Mr Prins was whispering in my ear.

Ms Lankin: I just wanted to understand that maybe there's a couple of these that seem to be in reverse order in my package. I had that as Liberal motion 43 and that we missed government motion 42. Perhaps, Madam Chair, you could just clarify for me. I realize I'm looking at that as well.

The Chair: The package that's on your desk I am told is actually in order, Ms Lankin. Is that the one—

Ms Lankin: I'm working from two at this point in time.

The Chair: OK, it's the one that was placed on your desk.

Mr Caplan: Yes, Frances, look at 45.

The Chair: That's the one that I'm going from.

Ms Lankin: Thank you. That clarifies it.

The Chair: So 42: we took the vote and it lost. Number 43 is a Liberal motion.

Mr Caplan: I move that paragraph 14 of subsection 51(9) of the bill be amended by adding at the beginning

"Except as set out in paragraph 13.1 or in subsection (10.1)."

The Chair: I'm ruling this one out of order because it is dependent on the one that just lost.

Mr Caplan: No, it also references subsection (10.1), which is live.

Ms Gottheil: Section 13.1 is out of order.

Mr Caplan: Section 13.1, but subsection (10.1) is still in order.

The Chair: So you're amending the amendment, then?

Mr Caplan: It's only this way because the last one failed. But yes, it would be—

The Chair: We'll take a vote on it, then. All in favour of that motion? Opposed? It doesn't carry.

Mr Caplan: It may in a minute, though.

The Chair: I'm sorry. I'm not laughing that it doesn't carry.

NDP motion number 44. Ms Lankin, do you have that in front of you? That deals with paragraph 14 of 51(9).

Ms Lankin: I move that paragraph 14 of subsection 51(9) of the bill be struck out and the following substituted:

"14. A transferred employee and a trade union that represents a transferred employee immediately before the effective date of the transfer has the right to file a grievance on or after the effective date of the transfer with respect to any matter that arose before the effective date of the transfer."

The Chair: All in favour of that motion? Opposed? That doesn't carry.

Government motion numbers 45 and 46.

Mr Coburn: I move that paragraphs 10, 11, 12, 13 and 14 of subsection 51(9) of the bill be struck out and the following substituted:

"10. Subject to paragraph 11, a trade union that has bargaining rights in respect of any of the transferred employees immediately before the effective date of the transfer ceases, as of the effective date of the transfer, to have any rights, interests, registrations, duties or liabilities under the Crown Employees Collective Bargaining Act, 1993 or under any collective agreement between the transferor and the trade union.

"11. A trade union that has bargaining rights in respect of any of the transferred employees immediately before the effective date of the transfer continues to represent the transferred employees for the purpose of proceedings before the Ontario Labour Relations Board and grievances, as described in paragraph 12.

"12. If a grievance is filed by or on behalf of a transferred employee against the transferor, or a grievance is filed by or on behalf of the transferor, or a proceeding before the Ontario Labour Relations Board is commenced by or on behalf of a transferred employee against the transferor, or a proceeding before the Ontario Labour Relations Board is commenced by or on behalf of the transferor, before the effective date of the transfer, and the grievance or proceeding is not resolved before that date,

"i. the grievance or proceeding is continued by or against the transferee,

"ii. all rights, obligations and liabilities of the employer as a result of the grievance or proceeding vest in or bind the transferee and not the transferor, except as otherwise specified by paragraph 6,

"iii. upon the resolution of the grievance or proceeding, the transferee does not have any obligations to a trade union or to the transferred employees under the Crown Employees Collective Bargaining Act, 1993 or under a collective agreement between the transferor and a trade union, and

"iv. upon the resolution of all grievances and proceedings under this paragraph, a trade union that had the right under paragraph 11 to continue to represent transferred employees for the purpose of such grievances and proceedings ceases to have any such right.

"13. No transferred employee, and no trade union that represents a transferred employee immediately before the effective date of the transfer, has the right on or after the effective date of the transfer to file a grievance under the collective agreement that is in force immediately before the effective date of the transfer with respect to any matter, regardless of whether the matter arose before or arises on or after the effective date of the transfer.

"14. Paragraph 13 does not limit the rights or duties of a trade union that acquires bargaining rights in respect of any of the transferred employees on or after the effective date of the transfer, as contemplated by clause (10)(c), to represent its members."

1700

Mr Gerretsen: How many government members does it take to vote on an amendment here? I saw six bodies moving around there.

The Chair: They're entitled.

Mr Gerretsen: Are they all constitutionally subbed in?

The Chair: They have notified the clerk and they are constitutionally subbed in. I would remind those who are constitutionally subbed in, as I have reminded existing members, to please, when you vote, raise your hand. I won't say it again.

Government amendment, pages 45 and 46. All in favour? Opposed? It carries.

Liberal motion number 47.

Mr Caplan: I move that section 51 of the bill be amended by adding the following subsection:

"All union rights apply

"(10.1) A trade union that acquires bargaining rights as contemplated by clause (10)(c) has all of the rights, duties and obligations of a trade union under the Labour Relations Act."

The Chair: All in favour of that amendment? Opposed? That doesn't carry.

NDP motion number 48.

Ms Lankin: This motion is verbatim to the Liberal motion that was just defeated. Therefore, I'll withdraw it.

The Chair: Government motion 48.5. Mr Coburn, do you have that in front of you?

Mr Coburn: That says "Subsection 51(11) of the bill"?

The Chair: Yes.

Mr Coburn: I move that subsection 51(11) of the bill be amended by striking out "the earlier of the date the local housing corporation was incorporated and" near the end.

The Chair: All in favour of that motion? Opposed? That carries.

NDP motion number 49, package two.

Ms Lankin: I move that section 51 of the bill be amended by adding the following subsection:

"Same

"(12) For the purposes of the Ontario Municipal Employees Retirement System, the transferred employees are entitled to immediate credit under the system for their service with the transferor as if it had been service with the transferee."

The Chair: All in favour of that? Opposed? That doesn't carry.

Shall section 51, as amended, carry? All in favour? Opposed? That carries.

Section 52, government motion number 50.

Mr Coburn: I move that subsections 52(1),(2) and (3) of the bill be amended by striking out "local housing authority" wherever it occurs and substituting in each case "transferor."

The Chair: All in favour of that motion? Opposed? That carries.

Government motion number 51.

Mr Coburn: I move that subsection 52(5) of the bill be amended by striking out "from a transferor other than a local housing authority or transfers it."

The Chair: All in favour of that motion? Opposed? That carries.

Shall section 52, as amended, carry? All in favour? Opposed? That carries.

Section 53.

Mr Coburn: I move that subsection 53(1) of the bill be amended by striking out "local housing authority" wherever it occurs and substituting "transferor."

The Chair: All in favour of that amendment? Opposed? Carried.

Shall section 53, as amended, carry? All in favour? Opposed? That carries.

Shall section 54 carry? All in favour? Opposed? That carries.

Liberal motion—this is a new section, so we'll deal with section 55 first.

Shall section 55 carry?

All in favour? Opposed? That carries.

Now we move to section 55.1, Liberal motion 53.

Mr Caplan: I move that the bill be amended by adding the following section after section 55:

"Employee records

"55.1 If a provincial document or any other record in the custody or under the control of the minister, the Ontario Housing Corp or a local housing authority concerns an employee who has been transferred by a transfer

order, the provincial document or the record shall not be transferred or disclosed in any manner to a service manager, a local housing corporation or any other transferee, without the consent of the transferred employee."

The Chair: All in favour? Opposed? That does not carry—although I think some members of the government are getting carried away.

On section 56, NDP motion 54.

Ms Lankin: I move that section 56 of the bill be amended by adding the following subsection:

"Restriction

"(2) A document under the control of the province concerning an employee of the transferor shall not be transferred to a service manager, transferee or local housing corporation unless the prior written consent of the employee to the transfer has been obtained."

The Chair: All in favour? Opposed? That doesn't carry.

Shall section 56 carry? All in favour? Opposed? That carries.

Shall sections 57 and 58, inclusive, carry? All in favour? Opposed? They carry.

Section 59, government motion 55.

Mr Coburn: I move that subparagraph 2 iv of subsection 59(2) of the bill be struck out and the following substituted:

"iv. a non-profit housing corporation that is incorporated under section 13 of the Housing Development Act and that is controlled by the related service manager or a related municipality."

The Chair: All in favour of that motion? Opposed? It carries.

Shall section 59, as amended, carry? All in favour? Opposed? That carries.

Section 60, government motion 56. Mr Coburn?

Mr Coburn: I move that section 60 of the bill be amended by adding the following subsections:

"Same

"(2) If a local housing corporation transfers to an entity mentioned in subparagraph 2 of subsection 59(2) pursuant to an agreement of all the assets, liabilities, rights and obligations that were transferred to the local housing corporation by a transfer order.

"(a) all of the restrictions and conditions that applied to the transfer to the local housing corporation by the transfer order apply to the transfer by the local housing corporation, and

"(b) subsection 33(3), section 35, subsections 45(2), (3), (4) and (7), section 47, subsection 49(1) and paragraphs 1, 2 and 4 of subsection 49(2) apply, with necessary modifications, to the transfer by the local housing corporation.

"Same

"(3) Subsection 33(3), section 35, subsections 45(2), (3), (4) and (7), section 47, subsection 49(1) and paragraphs 1, 2 and 4 of subsection 49(2) apply, with necessary modifications, to a transfer by an entity mentioned in subparagraph 2 iii or iv of subsection 59(2) pursuant to an agreement of all of its assets, liabilities,

rights and obligations to a local housing corporation in the same service area."

The Chair: I think he deserves a round of applause for that.

All in favour? Opposed? That carries.

Shall section 60, as amended, carry? All in favour? Opposed? That carries.

All in favour of section 61? Opposed? That carries.

On section 61.1 we have government motion 57.

1710

Mr Coburn: I move that the bill be amended by adding the following section:

"Supportive housing provider

"61.1 A provision of this part that applies to a supportive housing provider applies to the supportive housing provider only with respect to the units that are special needs housing in the housing projects operated by it."

The Chair: All in favour? Opposed? That carries.

I understand that we need to deal with Liberal motion 59 before we deal with government motion 58. Mr Caplan.

Mr Caplan: I move that the bill be amended by adding the following section after section 61:

"Authorized delegation of functions

"61.1 For greater certainty, any of the functions of a service manager under this part may be performed by another person or housing provider who is authorized to do so under section 14 or 15."

The Chair: All in favour? Opposed? That doesn't carry.

On section 61.2, government motion 58. Mr Coburn?

Mr Coburn: I move that the bill be amended by adding the following section:

"Service manager, supportive housing provider or lead agency

"61.2 Where subsections 68(1) or (2), 69(1), (2), (4) or (5), 69.1(1), (2) (3) or (4), 70(1), (2), (3), (4) or (5), 77(2) or 85(1.1) or (4) refers to a service manager, supportive housing provider or lead agency, it shall be interpreted in accordance with the following rules:

"1. If a lead agency is designated for the service area, the provision shall be deemed to apply only to the lead agency, and not to the service manager or a supportive housing provider.

"2. If a lead agency is not designated for the service area and a regulation is in force specifying that the provision applies to a supportive housing provider, the provision shall be deemed to apply only to a supportive housing provider and not to the service manager or lead agency.

"3. If a lead agency is not designated for the service area and no regulation is in force specifying that the provision applies to a supportive housing provider the provision shall be deemed apply only to the service manager, and not to a supportive housing provider or lead agency."

The Chair: All in favour? Opposed? That carries.

On section 61.2, we have Liberal motion 60.

Mr Caplan: I move the bill be amended by adding the following section after section 61:

"Administration of rent-geared-to-income programs

"Role of housing providers

"61.2 (1) Despite any other provision of this act or of a transfer order made under this act, each housing provider shall administer the rent-geared-to-income program at each housing project of the housing provider except as provided in this section.

"Duties of service manager

"(2) If the administration of a rent-geared-to-income program at a housing project is transferred to a service manager by a transfer order, the service manager must do the following things before the transfer takes effect

"1. Prepare a business case with respect to the program that takes into account the costs of the program and client service under the program.

"2. Consult with the housing providers affected by the program with respect to the administration of the program.

"Transfer

"(3) After the service manager does the things required by subsection (2), the transfer order takes effect and the housing provider shall administer the rent-geared-to-income program at each housing project of the housing provider in accordance with the arrangements developed in consultation with the service manager."

The Chair: All in favour of that motion? Opposed? It doesn't carry.

OK, now where do we go next? There's no amendments for 62, 63 and 64, so we'll deal with those inclusive.

Shall those sections carry? All in favour? Opposed? They carry.

The Chair: Now we'll go to section 65. Liberal motion number 61.

Mr Caplan: I move that section 65 of the bill be amended by adding the following subsection:

"Waiting lists for each housing project

"(1.1) If a centralized waiting list is established for all designated housing projects in a service area, the service manager shall maintain a subsidiary waiting list for each of the designated housing projects."

The Chair: All in favour of that motion? Opposed? It doesn't carry.

Mr Caplan: It did carry.

The Chair: I'm sorry. That carries.

Section 65, Liberal motion number 62.

Mr Caplan: In the spirit of co-operation—

The Chair: That does carry, by the way, the last one.

Mr Caplan: Thank you. I look forward to this one carrying, too.

I move that section 65 of the bill be amended by adding the following subsection:

"Transition waiting lists

"(1.2) If, before the service manager establishes a waiting list, the housing provider for a housing project has maintained a waiting list for the project, the housing

provider may continue to fill vacancies from the housing provider's waiting list until the list is exhausted."

This was one of the recommendations from Bethany Co-op, I believe, in Keswick.

The Chair: All in favour of that motion? Opposed? It doesn't carry.

Liberal motion number 63.

Mr Caplan: Perhaps this one will get all the support.

I move that section 65 of the bill be amended by adding the following subsections:

"Coordination

"(7) The service manager shall establish a system to coordinate access to rent-geared-to-income units in the designated housing projects in the service manager's service area and the system must include the following elements:

"1. A common application form for rent-geared-to-income assistance.

"2. Information to be made available to the public about social housing projects in the specific area.

"3. A one-time-only check of the eligibility of a household for rent-geared-to-income assistance, other than the verification of the income of the members of the household.

"Duty to consult

"(8) Before establishing the system to coordinate access to rent-geared-to-income units, the service manager shall consult with the designated housing providers concerning the design of the system.

The Chair: All in favour of that motion? Opposed? That doesn't carry.

Ms Lankin: I wonder if I might request the consideration of the committee for a brief five-minute recess and ask at that time, given that we're likely to be here past 6 o'clock, that some hot coffee be brought in.

The Chair: OK. Can we just deal with section 65 and then do that?

Shall section 65, as amended, carry? All in favour? Opposed? That carries.

We have a request for a five-minute recess.

The committee recessed from 1719 to 1727.

The Chair: Shall sections 66 and 67, inclusive, carry? All in favour? Opposed? They carry.

Section 68, government motion number 64.

Mr Coburn: I move that section 68 of the bill be struck out and the following substituted:

"Application for special needs housing

"68(1) A member of a household who wishes to have special needs housing in a designated housing project of a service manager may apply in accordance with this section to the service manager, to a supportive housing provider or, if a lead agency is designated for the service area, to the lead agency.

"Same

"(2) The application must contain such information and documents as may be prescribed or as may be required by the service manager, supportive housing provider or lead agency and must be submitted in a form

approved by the service manager, supportive housing provider or lead agency."

The Chair: I have a request for a comment.

Mr Caplan: Very quickly, there are many sections of this bill which are objectionable, but the whole special-needs housing to be placed into this bill and the management of it is really madness. I hope members of the government would understand that this is not something they should do. It's really rife with peril and danger. Enough said.

The Chair: A further comment?

Ms Lankin: Just to indicate that for the same reasons as stated, I'll be voting against the section.

This particular amendment, however, allows an applicant to apply to a supportive housing provider, not just the lead agency or the service manager. In a very bad section, this is a minimal improvement, so I'll vote in favour of the amendment but against the section.

The Chair: All in favour of the amendment? That carries.

Shall section 68, as amended, carry? All in favour? Opposed? That carries.

Section 69, Liberal motion number 65.

Mr Caplan: I move that subsection 69(4) of the bill be amended by adding at the end "at the time that the housing is first allocated to the household."

The Chair: All in favour of that amendment? Opposed? That doesn't carry.

Liberal motion number 66.

Mr Caplan: I move that subsection 69(6) of the bill be struck out and the following substituted:

"Same

"(6) If a decision under this section affects a housing provider or a designated housing project or a client of a support service agency, the service manager or lead agency shall also notify the housing provider or client, as the case may be, about the decision."

The Chair: All in favour of that amendment? Opposed? That doesn't carry.

Government motion 67-68.

Mr Coburn: I move that section 69 of the bill be struck out and the following substituted:

"Eligibility for special needs housing

"69(1) A service manager, supportive housing provider or lead agency, as the case may be, shall determine whether a household that applies for special needs housing in a designated housing project of the service manager is eligible for it.

"Same, continued eligibility

"(2) The service manager, supportive housing provider or lead agency shall periodically determine whether each household occupying special needs housing in a designated housing project of the service manager continues to be eligible for it.

"Eligibility rules

"(3) The decisions required by this section shall be made in accordance with such eligibility rules as may be established under this act for special needs housing.

"Duty

"(4) A service manager, supportive housing provider or lead agency shall ensure that special needs housing is given to only those households that are eligible for it.

"Notice

"(5) The service manager, supportive housing provider or lead agency shall give written notice to the household of its decisions under this section and shall do so in accordance with such requirements as may be prescribed.

"Same

"(6) If a decision by a service manager or lead agency under this section affects a housing provider operating a designated housing project, the service manager or lead agency shall also notify the housing provider about the decision."

The Chair: All in favour of that amendment? Opposed? That carries.

Shall section 69, as amended, carry? All in favour? Opposed? That carries.

Section 69.1, government motion 69-70.

Mr Coburn: I move that the bill be amended by adding the following section:

"Type of accommodation

"69.1(1) If a household applies for special needs housing and rent-geared-to-income assistance in a designated housing project of a service manager, the service manager, supportive housing provider or lead agency, as the case may be, shall determine what type of accommodation is permissible for the household.

"Same

"(2) The service manager, supportive housing provider or lead agency shall periodically determine whether the accommodation occupied by a household residing in special needs housing in a designated housing project of the service manager and paying geared-to-income rent continues to be permissible accommodation for the household.

"Criteria and procedures

"(3) The service manager, supportive housing provider or lead agency shall make the decisions required by this section in accordance with such occupancy standards as may be established under this act.

"Notice

"(4) The service manager, supportive housing provider or lead agency shall give written notice to the household of its decisions under this section, and shall do so in accordance with such requirements as may be prescribed.

"Same

"(5) If a decision by a service manager or lead agency under this section affects a housing provider operating a designated housing project, the service manager or lead agency shall also notify the housing provider about the decision.

"Non-application of s.64

"(6) Section 64 does not apply if this section applies."

The Chair: All in favour of that amendment? Opposed? It carries.

Section 70, government motion 71-72.

Mr Coburn: I move that section 70 of the bill be struck out and the following substituted:

"Waiting list for special needs housing

"70(1) A service manager, supportive housing provider or lead agency, as the case may be, shall establish and administer one or more waiting lists for special-needs housing in the designated housing projects of the service manager, and shall do so in accordance with such requirements as may be prescribed.

"Eligibility

"(2) A household is eligible to be included on a waiting list if the service manager, supportive housing provider or lead agency has determined that the household is eligible for special-needs housing in a designated housing project of the service manager and if the household is awaiting accommodation in, or a transfer to, such a housing project.

"Category

"(3) The service manager, supportive housing provider or lead agency shall determine what category within a waiting list the household is to be included in, and shall do so in accordance with such requirements as may be prescribed for special-needs housing.

"Rank

"(4) The service manager, supportive housing provider or lead agency shall rank the households on the waiting list or lists, and shall do so in accordance with such priority rules as may be established under this act with respect to special-needs housing.

"Notice

"(5) The service manager, supportive housing provider or lead agency shall give written notice to a household about whether the household is included on a waiting list and what category the household is listed in, and shall do so in accordance with such requirements as may be prescribed.

"Same

"(6) If a decision by a service manager or lead agency under this section affects a housing provider operating a designated housing project, the service manager or lead agency shall also notify the housing provider about the decision.

"Provision of information

"(7) A service manager shall, in accordance with such requirements as may be prescribed, provide applicants for special needs housing with information pertaining to the availability of special-needs housing in its service area.

"Request for information

"(8) A service manager may request supportive housing providers and lead agencies in its service area to provide it with such information as it considers necessary to enable it to provide the information referred to in subsection (7), and each supportive housing provider and lead agency shall comply with such a request."

The Chair: All in favour of those amendments? Opposed? That carries.

Shall section 70, as amended, carry? All in favour? Opposed? That carries.

Section 71. NDP motion 73.

Ms Lankin: I move that paragraph 8 of subsection 71(3) of the bill be amended by adding the following sentence at the end:

"The rule must provide that, when a household goes into arrears after its assistance is removed or reduced or after charges are deferred, the service manager shall pay to the housing provider an amount equal to the assistance that has been removed or the full market housing charge for the household's unit until the housing provider regains possession of the unit. The rule must also provide that, when a geared-to-income occupant vacates a unit or goes into arrears, the assistance paid by the service manager to the housing provider for that unit continues until the unit is filled."

The Chair: All in favour of that motion? Opposed? That does not carry.

Shall section 71 carry? All in favour? Opposed? That carries.

Shall sections 72 through to 75 inclusive carry? All in favour? Opposed? They carry.

Section 75.1. Government motion 74.

Mr Coburn: I move that the bill be amended by adding the following section before section 76 and immediately after the heading "Decisions and Internal Review":

"Opportunity to comment

"75.1 Before a service manager, supportive housing provider or lead agency makes a decision that is adverse to a household and that may be reviewed under section 77, it shall, subject to such restrictions and requirements as may be prescribed, give the members of the household an opportunity to comment on any information that, in the opinion of the decision-maker, may form a significant basis for the decision."

The Chair: All in favour of that motion? Opposed? That carries.

Section 76: Ms Lankin, we have to reverse the order of the two amendments. We need to hear government amendment 76 first.

Mr Coburn: I move that section 76 of the bill be struck out and the following substituted:

"Notice to household

"76 When giving a household notice of a decision that may be reviewed under section 77, the service manager, supportive housing provider or lead agency shall tell the household that any member of the household is entitled to request a review, and shall include information on how to make such a request and the deadline for doing so."

The Chair: All in favour of that motion? Opposed? It carries.

NDP motion 75.

Ms Lankin: The intent of NDP motion 75 is the same as the motion the government just put forward, so I will withdraw that.

The Chair: That is withdrawn.

Shall section 76, as amended, carry? All in favour? Opposed? That carries.

Section 77. Government motions 77 and 78.

1740

Mr Coburn: I move that section 77 of the bill be struck out and the following substituted:

"Internal review

"77(1) A member of a household may request an internal review of any of the following decisions of a service manager, supportive housing provider or lead agency:

"1. A decision that the household is ineligible for rent-geared-to-income assistance.

"2. A decision that the household is ineligible for special needs housing.

"3. A decision respecting the type of accommodation in which the household may be accommodated.

"4. A decision respecting the category into which the household has been placed on a waiting list.

"5. A decision respecting the amount of geared-to-income rent payable by the household.

"6. A decision respecting a deferral of geared-to-income rent payable by the household.

"Request for internal review

"(2) The request for an internal review must be made in accordance with such requirements as may be prescribed or, if none are prescribed, in accordance with such requirements as may be established by the service manager, supportive housing provider or lead agency."

The Chair: All in favour of that motion? Opposed? That carries.

Shall section 77, as amended, carry? All in favour? Opposed? That carries.

Shall section 78 carry? All in favour? Opposed? That carries.

Section 79. Government amendment 79.

Mr Coburn: I move that subsection 79(1) of the bill be struck out and the following substituted:

"When decision takes effect

"(1) A decision by a service manager under section 63, 64, 65, 66, 69, 69.1 or 70 or a decision of a supportive housing provider or lead agency under section 69, 69.1 or 70 is effective from the date specified by the service manager, supportive housing provider or lead agency, whether that date is before, on or after the date the decision was made."

Ms Lankin: I'm seeking clarification from the parliamentary assistant. It appears to me, given that this leads back to sections that deal with the hearings and process, that you're essentially allowing a retroactive decision, irrespective of what goes on in those hearings, whether or not there is a finding of an illegal act or a finding of some kind of deceit or fraud that has taken place. Could you clarify your intent with respect to that kind of retroactive application of the decision?

Mr Coburn: This is consequential to the motion to amend section 68, if you would refer back to that.

Ms Lankin: It does, however, provide retroactivity in the application of the decision.

Mr Coburn: If I could just take a moment, I want to make sure.

Ms Lankin: Thank you. I genuinely am seeking clarification. That's what it appears.

Mr Coburn: With your indulgence, Madam Chair, I'd like to get confirmation on that.

Mr Clark: Madam Chair, while they're doing that, I'd like to seek unanimous consent for Wayne Wettlaufer to sub in for Garry Guzzo from 6 pm until the end of the day.

Mr Gerretsen: Mr Guzzo isn't here. How can Mr Wettlaufer sub for Mr Guzzo?

Mr Clark: He's a regular member.

The Chair: Is there unanimous consent for Mr Wettlaufer to sit in for Mr Guzzo from 6 pm? That's fine, Mr Clark.

Mr Coburn: For clarification, there's the addition of "supportive housing provider."

Ms Lankin: I realize that. The entire section, however, does allow for retroactivity of the application of the decision. Am I correct?

Mr Coburn: It's my understanding, yes.

Ms Lankin: I am in agreement that it's a good idea to add "supportive housing provider" to the language. The language is bad. I will be voting against this amendment, because I think the principle of retroactivity that the government is supporting is unfortunate when there is nothing in the preceding sections referred to here that requires a finding of guilt or an illegal act or problem; it's simply finding an ineligibility. I think that application of retroactivity is problematic as a concept in law.

The Chair: Further comment? We will take amendment number 79. All in favour? Opposed? That carries.

Shall section 79 as amended carry? All in favour? Opposed? That carries.

Section 80 and 81 inclusive. All in favour? Opposed? They carry.

Section 82. Liberal amendment number 80.

Mr Caplan: I move that section 82 of the bill be amended by adding the following subsection as subsection (1):

"Agreement with housing provider

"(1) Subject to subsections 15(2), (3), (5), (6), (9), (10) and (11), a service manager and a housing provider may enter into an agreement providing for the housing provider to perform all or some of the duties or exercise all or some of the powers of the service manager under Part V as they apply to a designated housing project."

The Chair: All in favour of the amendment? Opposed? That doesn't carry.

Shall section 82 carry? All in favour? Opposed? That carries.

Shall section 83 carry? All in favour? Opposed? That carries.

Ms Lankin?

Ms Lankin: Before we move to the next amendment, I notice the bells are ringing for a vote, and I believe we should be adjourning to go to vote. I just want to ask the parliamentary assistant his intentions. We as a committee have permission to sit beyond 6, and I understand there is willingness to sit beyond 6. Is it your intention to deal

with all amendments tonight, or do we have some time frame we're looking at tonight, for example, 9 or 9:30?

Mr Coburn: We'd like to deal with all amendments tonight. Hopefully it will be done before 9.

Ms Lankin: Perhaps this is something that, when we come back—if we have permission, we still need to have the committee agree to sit beyond 6. As I understand it, perhaps we could deal with this in blocks, perhaps two hours at a time so we can gauge where we are. I'm more than willing to stay to try to accomplish it tonight.

If there appears to be no opportunity to accomplish it tonight, then I think we should talk about what other accommodations might be made. My hope also would be that we could finish it tonight. You might want to give some thought to that when we come back, and we can set some time frames which we can review it as the evening goes on.

Mr Coburn: Our position is that we'd like to finish it tonight. When do we come back at—Madam Chair, I think you suggested 6:30?

The Chair: I think there was some agreement to return here at 6:30. It gives you a chance to—

Mr Gerretsen: You need unanimous consent for that, don't you?

Ms Lankin: I wasn't aware of an agreement to return at 6:30.

The Chair: Sorry, Ms Lankin. There was some discussion about that. I thought it had been discussed.

Ms Lankin: I would have thought we would just come back and keep on going.

Mr Coburn: That's an option too.

The Chair: What is the wish of the committee?

Ms Lankin: That would be preferable. I understand it's difficult, and I don't know whether sandwiches or something can be brought down to accommodate that. I have commitments in my community at the other end of the evening, and I want to stay and get this done. If we can avoid losing that half hour, that makes it easier.

Mr Coburn: Madam Chair, we're flexible here. We'd like to finish it tonight. So whether we start at 6:30 or right after is—

The Chair: Is it the wish of committee to come straight back then, perhaps pick up a sandwich or whatever from your caucus room and bring it down and we proceed as we eat?

Mr Gerretsen: We have no problem sitting up until 9 o'clock, but that's sort of the limit.

Ms Lankin: Well, let's see where we can get to by then.

The Chair: OK. We'll see where we get to then. We're coming straight back after the vote?

Mr Gerretsen: Well, can we grab a sandwich? Shall we say 6:10 for argument's sake?

The Chair: Sure, I'm not going to begrudge you five minutes.

The committee recessed from 1750 to 1820.

The Chair: I call the meeting to order. Mr Coburn.

Mr Coburn: I'd like unanimous consent to sub Mr DeFaria back on to committee.

The Chair: Agreed? Agreed. Mr DeFaria is now a member.

Ms Lankin: I would like unanimous consent to call back a motion that I withdrew earlier. It's NDP motion 75 dealing with subsections 76(2) and (3).

The Chair: Is there unanimous consent to open the section? Agreed.

Ms Lankin: And to put NDP motion 75.

The Chair: NDP motion number 75. This is the one that I changed the—

Ms Lankin: —the order in, and it was my mistake when that happened. I moved on to the next page and mistakenly withdrew this one, which is one that the government has indicated support for.

The Chair: Fine. Then we'll deal with section 76. NDP motion number 75.

Ms Lankin: Thank you. I move that section 76 of the bill be amended by adding the following subsections:

"Notice to housing provider

"(2) The service manager or lead agency shall notify the housing provider of any decision that may affect the housing provider and that may be reviewed under section 77 and of the review process available to members of a household in respect of the decision.

"Same

"(3) If a member of a household requests a review under section 77 of a decision that may affect a housing provider, the service manager or lead agency shall notify the housing provider of the details of the request."

The Chair: All in favour? That carries.

We'll now just deal with section 76. Shall section 76, as amended, carry? All in favour? Opposed? That carries.

We'll move forward to section 84. Government motion number 81.

Mr Coburn: I move that subsection 84(2) of the bill be struck out and the following substituted:

"Termination

"(2) If the minister, after consulting with the parties to a referral agreement, forms the opinion that the agreement should be terminated, the Lieutenant Governor in Council may make a regulation terminating the agreement on the date prescribed in the regulation.

"Amendment

"(3) After consulting with the parties to a referral agreement, the minister or the service manager may amend a referral agreement if the amendments are made in accordance with the prescribed rules."

The Chair: All in favour of that motion? Opposed? That carries.

Shall section 84, as amended, carry? All in favour? Opposed? That carries.

On section 84.1. Liberal motion 82-83.

Mr Caplan: I move that the bill be amended by adding the following section after section 84:

"Termination of certain referral agreements, housing co-ops.

"84.1(1) In this section,

"'referral agreement' means an agreement, memorandum of understanding, letter of commitment or a com-

bination of any of them (whether oral or written) that is entered into by a housing provider before the date on which responsibility for a housing project is transferred under section 10 and that gives a right to a person other than the housing provider to control access to special needs housing within the housing project.

"Postponement

"(2) Despite the termination of an operating agreement under subsection 86(2), sections 68 to 70 do not have effect in a designated housing project until the date on which the minister determines that the new regime for administering special needs housing, including special needs housing provided pursuant to an operating agreement described in paragraph 2 of subsection 86(2) is established.

"Same

"(3) Until sections 68 to 70 have effect, the administration of special needs housing for a housing project shall be carried out in accordance with the referral agreement, if any, or any existing arrangements relating to the housing project.

"Same

"(4) Every referral agreement relating to a housing project within the service area of a service manager is terminated when sections 68 to 70 begin to have effect in the housing project.

"Same

"(5) When a referral agreement is terminated under subsection (4), any rights of the parties arising out of the operating agreement that are attributable to matters that occurred before the termination of the operating agreement are preserved.

"Same

"(6) Despite subsection (4), if a matter is addressed under a referral agreement or an existing arrangement and it is not addressed under the new regime for administering special needs housing, the referral agreement or existing arrangement remains in effect with respect to the matter. However, the parties to the agreement or arrangement shall amend it within a reasonable time so that it is consistent with the new regime for administering special needs housing."

The Chair: All in favour of that motion? Opposed? That does not carry.

Section 85. Government motion number 84.

Mr Coburn: I move that section 85 of the bill be struck out and the following substituted:

"Application procedures

"85(1) A service manager shall establish procedures governing applications for rent-geared-to-income assistance.

"Same

"(1.1) A service manager, supportive housing provider or lead agency, as the case may be, shall establish procedures governing applications for special needs housing.

"Same

"(2) The application procedures may include rules providing for transitional matters in connection with the procedures.

"Same

"(3) The application procedures take effect on the day specified by the service manager, supportive housing provider or lead agency.

"Same

"(4) In establishing application procedures for special needs housing, the service manager, supportive housing provider or lead agency shall comply with such regulations as may be made by the minister governing their establishment."

The Chair: All in favour of that motion? Opposed? That carries.

Shall section 85, as amended, carry? All in favour? Opposed? That carries.

Shall section 86 carry? All in favour? Opposed? That carries.

Section 87. Government motion number 85.

Mr Coburn: I move that section 87 of the bill be amended by adding the following subsection:

"Same

"(1.1) This part ceases to apply to a housing project on the date the duty to pay a subsidy to the housing project is terminated under subsection 97(2)."

Ms Lankin: Can I just ask the parliamentary assistant to give us an explanation of this amendment, please?

Mr Coburn: This provides clarification that ensures that part VI requirements cease to apply to a housing provider on that date and that the service manager is no longer required to provide funding.

Ms Lankin: The part VI requirement is what?

Mr Coburn: One moment. Wait till I go back in my data.

Ms Lankin: OK.

Mr Coburn: Part VI is coming back to me now. It's the operative framework. It applies to co-operative housing.

Ms Lankin: Thank you.

The Chair: All in favour of that amendment? Opposed? That carries.

Shall section 87, as amended, carry? All in favour? Opposed? That carries.

Section 88. Government motion number 86.

Mr Coburn: I move that clause 88(2)(c) and (d) of the bill be struck out and the following substituted:

"(c) the housing provider's participation in a waiting list system established for the service area by the service manager for rent-geared-to-income assistance or a waiting list system established for the service area by the service manager or a lead agency for special-needs housing;

"(d) the housing provider's compliance with eligibility rules, occupancy standards and priority rules established under part V for the service area, including those established with respect to special-needs housing, and the housing provider's selection of households to occupy vacant units in its housing projects;"

The Chair: All in favour of that motion? Opposed? That carries.

Liberal motion number 87.

Mr Caplan: I move that subsection 88(2) of the bill be amended by adding the following clause after clause (e):

"(e.1) the housing provider's obligation to make annual contributions to a capital reserve fund sufficient to pay for the replacement of major assets and to update his capital reserve plans regularly."

The Chair: All in favour of that motion? Opposed? It does not carry.

Shall section 88, as amended, carry? All in favour? Opposed? That carries.

Section 89. Liberal motion number 88.

Mr Caplan: The one that was originally there has been withdrawn. Everybody has the new copy.

The Chair: This is dealing with subsection 89(1)? I've got that.

Mr Caplan: There's just a minor change in wording. I move that subsection 89(1) of the bill be amended by adding at the end "other than a matter relating to a matter mentioned in clause 88(2)(a), (b), (e), (f), (g) or (h)."

1830

The Chair: All in favour of that motion? That carries.

Shall section 89, as amended, carry? All in favour? Opposed? That carries.

Section 90. government motion number 89.

Mr Coburn: I move that subsection 90(2) of the bill be amended by adding the following clause:

"(a.1) in the case of a housing provider that is a non-profit housing co-operative,

"(i) allow a member of the co-operative to occupy a member unit of the co-operative, and

"(ii) allow a non-member of the co-operative to occupy, or offer, list, advertise or hold out for occupancy, a non-member unit of the co-operative for a term not exceeding one year."

The Chair: All in favour of that motion? That carries.

Liberal motion number 90.

Mr Caplan: I move that subsection 90(2) of the bill be amended by adding the following clause:

"(c) offer or grant occupancy rights for individual units to members in accordance with the Co-operative Corporations Act or advertise or otherwise represent that such rights are available."

The Chair: All in favour of that motion? Opposed? That does not carry.

Shall section 90, as amended, carry? All in favour? Opposed? That carries.

Section 91. Liberal motion number 91.

Mr Caplan: I move that section 91 of the bill be amended by adding the following subsection:

"Same

"(4.1) The document required may be registered or deposited and shall be accepted for registration or deposit under the Registry Act and may be registered and shall be accepted for registration under the Land Titles Act, despite any provision of those acts."

The Chair: All in favour of that motion? That carries.

Shall section 91, as amended, carry? All in favour? Opposed? That carries.

Shall section 92 carry? All in favour? Opposed? That carries.

Section 93, Liberal motion number 92.

Mr Caplan: Madam Chair, I seek your advice. This one has been changed as well. I withdraw this one; it's been changed to subsection 106. Do you want to deal with it now or do you wish to deal with it when we come to subsection 106?

The Chair: So you'll withdraw that one and re-introduce it as 106?

Mr Caplan: Yes, the subsection refers to not only this one but also to Liberal motion number 94. The two of them are—

The Chair: So you want them both withdrawn and moved to subsection 106?

Mr Caplan: Subsection 106.

The Chair: Is the committee in agreement with that? We'll just deal with that when we get there, then.

Mr Caplan: We'll deal with them when we get there? Fine.

The Chair: When we get to 106.

Mr Caplan: Yes, fine.

Interjection.

The Chair: A clarification, Mr Caplan. You're moving motion numbers 93 and 94 to 106?

Mr Caplan: No; 92 and 94.

The Chair: Under section 93, you're moving number 92 to 106.

Mr Caplan: They'll be captured under 106.

The Chair: OK. So we do need to withdraw that, because that's the only motion. That's withdrawn.

Mr Coburn: For clarification, Madam Chair: that's subsections 93(4) and (6) and subsection 94(6)?

Mr Caplan: No; 94(7) to (9).

Mr Coburn: OK.

The Chair: It's 94(7) to (9).

Let's just deal with section 93 first. There is no amendment now because it's been withdrawn.

Shall section 93 carry? All in favour of section 93? Opposed? That was a tie vote.

Interjection.

The Chair: No because the amendment has been withdrawn. I will be voting to carry the section.

Section 94. Do you want to deal with Liberal motion number 93?

Mr Caplan: Yes. That one is still live.

I move that section 94 of the bill be amended by adding the following subsection:

"Transition

"(6) Any rent supplement agreement that is provided under the Ontario Community Housing Assistance Program or the Community-Sponsored Housing Program and that relates to a housing project for which there is an operating agreement described in paragraph 3 of subsection 86(2) is extended until the expiry of the operating agreement described in that paragraph for that housing project, unless the housing provider who is a party to the rent supplement agreement and the service manager responsible for funding under the rent supplement agree-

ment agree to terminate or amend the rent supplement agreement."

The Chair: All in favour of that motion? Opposed? That doesn't carry.

Now, 94, Mr Caplan, you want to withdraw?

Mr Caplan: That's withdrawn and will be dealt with later under 106.

The Chair: OK. Shall section 94 carry? All in favour? Opposed? That carries.

Section 95, Liberal motion number 95.

Mr Caplan: I move that section 95 of the bill be amended by adding the following subsection:

"Same

"(2) A housing provider shall select households to occupy vacant units or to receive rent-geared-to-income assistance in a housing project in a manner that is consistent with

"(a) subsection 88(1), and

"(b) the categories of households that are eligible to occupy units in the housing project as authorized by the mandate for the project."

The Chair: All in favour of that motion? Opposed? That does not carry.

Shall section 95 carry? All in favour? Opposed? That carries.

Section 96, government motion number 96.

Mr Coburn: I move that subsection 96(6) of the bill be struck out and the following substituted:

"Change restricted

"(6) The service manager shall not require the housing provider to increase or decrease the number of rent-geared-to-income units if the effect of the increase or decrease in rent-geared-to-income units would be to decrease by more than 10%, or to increase by more than 10%, the number of market units set out in the targeting plan that is in effect for the housing project under section 93."

The Chair: All in favour of that motion? Opposed? That carries.

Liberal motion number 97.

Mr Caplan: It's a duplicate of the last motion. It's withdrawn.

The Chair: So it's withdrawn.

Shall section 96, as amended, carry? All in favour of section 96? Opposed? That carries.

Section 97. Shall section 97 carry? All in favour of section 97? Opposed? That carries.

Section 98, Liberal motion number 98.

Mr Caplan: I move that subsection 98(2) of the bill be amended by striking out the definition of the variable "E" and by striking out the formula and substituting the following:

"(A + B + C) - D."

If I could just comment: this whole section deals with the funding that's going to be provided for housing projects. It is an untested and untried model. There is a great deal of concern about it. This one provision—any of the members of this committee who may have a municipal background would know that when you start to

tamper with surpluses and claw them back, funny things start to happen that you don't generate surpluses. I would strongly urge members of this committee to pass this amendment.

Mr Gerretsen: Just so that I'm clear, it's "(A + B + C)"?

The Chair: It's not very clear on the printed copy, but it is "(A + B + C) - D."

All in favour of that motion? Opposed? That does not carry.

NDP motion number 99.

1840

Ms Lankin: I move that the definition of the variable "E" in subsection 98(2) of the bill be struck out and the following substituted:

"E" is the amount equal to that portion of the provider's surplus for the fiscal year in respect of its housing projects in the service area that remains after,

"(a) any accumulated deficits from previous years are offset,

"(b) any liabilities not included in the funding formula are discharged,

"(c) an operating reserve equal to two months of operating expenses is funded, and

"(d) any supplements to normal capital reserve fund contributions are made if the capital reserve is underfunded as determined by a capital reserve fund study approved by the service manager,

"or it is such lesser amount as the service manager may determine."

If I may, Mr Caplan spoke to the rationale for this in his motion. This motion is a more comprehensive version and again tries to deal with the issue of surpluses, of what's paid back to municipalities, of ensuring that the housing providers in these circumstances are protected. I would hope that the government's rejection of Mr Caplan's motion was only because it wasn't comprehensive enough and that this one will persuade them to support the concept.

The Chair: All in favour of the motion?

Mr Caplan: I'll support this lesser one, Madam Chair. I'll support you, Frances.

The Chair: Opposed? That does not carry.

Moving to the next package, starting with government motion number 100.

Mr Coburn: I move that subsection 98(3) of the bill be amended by striking out "the total amount of principal and interest payable by the provider for the fiscal year with respect to mortgages on those projects" and substituting "the total amount of principal and interest payable by the provider for the fiscal year under mortgages guaranteed by the province of Ontario or the Ontario Housing Corporation in respect of those projects."

The Chair: All in favour of that motion? Opposed? It carries.

Members of committee, I've just received some information that there is probably going to be a motion pertaining to our committee in the House—immediately?

Mr Caplan: When the House resumes.

The Chair: When the House resumes.

Ms Lankin: The details of it refer to 7 o'clock, so we've got time to hear back from the House that they've passed it.

Mr Gerretsen: Should we not be there to speak to it and address some other urgent issues?

The Chair: What is the wish? Do you want to recess for a moment?

Mr Caplan: No, no. Let's keep moving.

The Chair: Just keep moving?

Mr Caplan: Yes.

The Chair: Then we'll move to Liberal motion number 101.

Mr Caplan: I'm certain that all members of the committee will be supporting this motion.

I move that subsection 98(5) of the bill be amended by striking out the portion before paragraph 1 and substituting the following:

"Phase-in subsidy reductions

"(5) If the amount of a housing provider's subsidy (other than the rent-geared-to-income subsidy) determined under this section is less than the subsidy (other than the rent-geared-to-income subsidy) paid to the provider under an operating agreement that is terminated by this act, the following rules apply."

The Chair: All in favour of that motion? That carries. NDP motion number 102.

Ms Lankin: This is subsection 98(6).

I move that the definition of the variable "F" in subsection 98(6) of the bill be struck out and the following substituted:

"F" is the total actual market rent for the fiscal year from the rent-geared-to-income units in the provider's housing projects in the service area."

This just clarifies that RGI subsidy calculation only takes into account market rents in the RGI units and not market rents that have nothing to do with RGI.

The Chair: All in favour of that motion? Opposed? That does not carry.

NDP motion number 103.

Ms Lankin: I move that the definition of variable "G" in subsection 98(6) of the bill be amended by striking out "the amount of rental payments payable" and substituting "the amount of rental payments paid."

The Chair: All in favour of that motion? Opposed? That doesn't carry.

Liberal motion number 104.

Mr Caplan: Madam Chair, I'll give it a shot; I don't know. I move that paragraph 2 of subsection 98(7) of the bill be amended by striking out "prescribed by the minister" and substituting "prescribed for the year by the minister."

The Chair: All in favour of that motion? Opposed? That doesn't carry.

NDP motion number 105.

Mr Gerretsen: I don't understand why you're against that. It clarifies it.

Ms Lankin: I understood you were supporting that.

The Chair: NDP motion number 105, Ms Lankin.

Ms Lankin: I move that subsection 98(8) of the bill be amended by striking out the formula and substituting the following—and, Madam Chair, for the life of me, I can't read that. Can someone help me?

The Chair: I was going to say, make sure they print this properly.

Ms Lankin: “ $(H \times 0.95) - (H \times J/K)$.”

The Chair: Does everyone understand that motion? All in favour of that motion? Opposed? That doesn't carry.

We will move to NDP motion number 106.

Ms Lankin: I move that the definition of the variable “H” in subsection 98(8) of the bill be amended by striking out “the amount of the provider's indexed market revenue” in the first and second lines and substituting “the amount of the provider's market rental revenue.”

The Chair: All in favour of that motion? Opposed? That doesn't carry.

Liberal motion number 107.

Mr Caplan: I move that the definitions of the variables “H” and “K” in subsection 98(8) of the bill be amended by striking out “benchmark revenue” wherever it appears and substituting in each case “benchmark market rental revenue.”

The Chair: All in favour of that motion?

Interjection: Do you want to put a slash there?

The Chair: Was there a slash?

Mr Caplan: If you choose to vote in favour, I will put a slash in. Is that OK?

The Chair: All in favour of that motion? Opposed? That doesn't carry.

Liberal motion number 108.

Mr Caplan: I move that paragraph 1 of subsection 98(9) of the bill be amended by striking out “indexed market revenue” in the third line and substituting “market rental revenue.”

I'm hoping for the strong support of all members on this one.

The Chair: All in favour of that motion? Opposed?

Interjection: Opposed.

The Chair: Liberal motion number 109.

Mr Caplan: Did you guys change your mind on this?

Interjection.

Mr Caplan: Yes, they changed their mind.

I move that paragraph 2 of subsection 98(9) of the bill be amended by striking out “prescribed by the minister” and substituting “prescribed for the year by the minister.”

The Chair: All in favour of that motion? Opposed? That does not carry.

Liberal motion number 110.

Mr Caplan: I move that subsection 98(9) of the bill be struck out.

Mr Gerretsen: This is the best one.

Mr Caplan: This is their chance.

The Chair: All in favour of that motion? Opposed? That does not carry.

Government motion 110.1.

Mr Coburn: I move that subsection 98(10) of the bill be struck out and the following substituted:

“Surplus

“(10) The amount, if any, of the provider's surplus for a fiscal year in respect of its housing projects in the service area is the amount determined using the formula.

“ $L - (M + N + P)$

“in which,

“‘L’ is the amount of the provider's net operating income for the fiscal year as set out in the annual report required under subsection 108(1) relating to that fiscal year;

“‘M’ is the amount of the provider's affordable mortgage payment determined by the minister under section 99;

“‘N’ is the amount of the provider's mandatory payment for the fiscal year; and

“‘P’ is the amount of an operating reserve, as determined in the manner prescribed by the minister.”

The Chair: All in favour of that motion? Opposed? That carries.

Liberal motion 111.

Mr Caplan: I move that subsection 98(10) of the bill be struck out.

The Chair: All in favour of that motion? Opposed? That does not carry.

Liberal motion 112.

Mr Caplan: I move that subsection 98(11) of the bill be amended by inserting after “exceeds its operating costs” in the fifth and sixth lines “including all taxes, less its affordable mortgage payment.”

The Chair: All in favour of that motion? Opposed? That does not carry?

Shall section 98, as amended, carry? All in favour? Opposed? That carries.

Mr Coburn: Madam Chair, could I have a two-minute recess?

The Chair: We'll have a two-minute recess.

The committee recessed from 1852 to 1903.

The Chair: I call the meeting to order. Members of the committee, I have just been handed a motion that has just passed in the House that reads as follows:

“I move that notwithstanding the standing orders or any other order of the House relating to Bill 128, for the purpose of this evening's clause-by-clause consideration, at 7 pm all amendments shall be deemed to be moved except where specifically requested to be moved by any member of the committee.”

What that means essentially is that I will proceed to read each section and amendment number, and I'll do it fairly slowly to start so that you know exactly what's being voted on.

Mr Gerretsen: Why is the government trying to railroad this through? Shouldn't this have due consideration, Madam Chair?

The Chair: I cannot speak for the government.

Mr Gerretsen: Maybe the parliamentary assistant has a comment on that.

The Chair: I think we will now proceed with section 99. We did carry section 98, right? OK, section 98, NDP motion 113.

Interjections: Section 99.

Mr Coburn: Madam Chair, could you read the subsection, like 99 and so on? The page numbers don't all coincide.

The Chair: I will do that, certainly.

This is NDP motion 113, subsection 99(1), paragraph 2. All in favour of that motion? Opposed? That does not carry.

Liberal motion number 114, which is subsection 99(1.1): All in favour of that motion? Opposed? That does not carry.

NDP motion number 115, which is subsection 99(1.1): All in favour of that motion? Opposed? That does not carry.

Government motion number 116, which is subsection 99(6): All in favour of that motion? Opposed? That carries.

Shall section 99, as amended, carry? All in favour? Opposed? That carries.

Section 100: This is government motion number 117, dealing with subsection 100(1). All in favour of the amendment? That carries.

Shall section 100, as amended, carry? All in favour? Opposed? That carries.

Section 101: Mr Caplan.

Mr Caplan: This one has been withdrawn and there was another one in place related to 101(2), definition of (b).

The Chair: This is subsection 101(2), definition of (b). All in favour of that motion? Opposed? That carries.

The Chair: Government motion 119, which is subsection 101(2): All in favour of that motion? Opposed? That carries.

Liberal motion number 120, which is subsection 101(2): All in favour of that? Opposed? That does not carry.

Government motion 120.1, dealing with subsection 101(4).

Interjection: Government motion?

The Chair: This is government motion 120.1, dealing with subsection 101(4) of the bill. All in favour of that motion? Opposed? That carries.

This is why I'm going to repeat it twice, to make sure you absolutely understand what you're voting on.

Liberal motion 121 deals with subsection 101(4). All in favour of that motion? Opposed? That does not carry.

Shall section 101, as amended, carry? All in favour? Opposed? That carries.

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On section 101.1, Liberal motion 122, which is new section 101.1: All in favour of that motion? Opposed? That does not carry.

Section 102, Liberal motion 123, dealing with subsection 102(1.1): All in favour of that motion? Opposed? That does not carry.

Government motion 124, dealing with subsection 102(4): All in favour of that motion? Opposed? That carries.

Shall section 102, as amended, carry? All in favour? Opposed? That carries.

Section 103, government motion 125, dealing with section 103: All in favour of that motion? Opposed? That carries.

Shall section 103, as amended, carry? All in favour? Opposed? That carries.

This is section 104. This deals with government motion 126, subsection 104(3) of the bill. All in favour of that motion? Opposed? That carries.

Shall section 104, as amended, carry? All in favour? Opposed? That carries.

Section 105, government motion 127, dealing with subsection 105(2): All in favour of that motion? Opposed? That carries.

Liberal motion 128, dealing with subsections 105(2) and (3)—

Mr Caplan: Madam Chair, while subsection (2) is the same, that's withdrawn, but subsection (3) remains.

The Chair: Subsection (2) is withdrawn?

Mr Caplan: Subsection (2) is withdrawn because it's the same as the one that just passed.

The Chair: And (3) remains. Just a minute; let's just check this out. You've withdrawn subsection (2).

Mr Caplan: It's the same as the one that just passed.

The Chair: Subsection (3) is government motion 127. So are you withdrawing the whole thing?

Mr Caplan: No, just subsection (2). Subsection (3) is new. I didn't know at the time when I submitted the amendment.

The Chair: That is an amendment to your amendment.

Members of committee, please appreciate that the motion is deemed to have been moved.

Mr Caplan: So I'll withdraw it and let's do the whole thing then.

The Chair: So are you withdrawing—

Mr Caplan: No. Let's just vote, because I want to keep part (3).

The Chair: So we'll just vote on it then.

Mr Caplan: Sure.

The Chair: Dealing with Liberal motion 128, which is subsections 105(2) and (3): All in favour of that motion? Opposed? That does not carry.

Shall section 105, as amended, carry? All in favour? Opposed? That carries.

Shall section 106 carry?

Mr Caplan: Madam Chair, we have amendments to sections 93 and 94.

The Chair: Yes, you're quite correct. My apologies about that. Mr Caplan, you may recall, withdrew, back in section 90-whatever, to move it into section 106. This deals with Liberal motion, subsection 106(3.1), which relates to Liberal motion to subsections 93(4) to (6) and subsections 94(7) to (9).

Mr Caplan: No, Madam Chair. If I could clarify, that's what was originally being proposed. That has been withdrawn and it's being consolidated under section 106.

Mr Coburn: As an alternative to it.

Mr Caplan: Exactly.

The Chair: Does the committee understand that? All in favour of the Liberal motion? That carries.

Is there anything else under 106, Mr Caplan?

Mr Caplan: No.

The Chair: Shall section 106, as amended, carry? All in favour? Opposed? That carries.

Section 107, Liberal motion 129, dealing with subsection 107(2): All in favour of that motion? That carries.

Shall section 107, as amended, carry? All in favour? Opposed? That carries.

Section 108, Liberal motion 130, dealing with subsection 108(3): All in favour of that motion? Opposed? That does not carry.

Liberal motion 131—

Mr Caplan: That one has been withdrawn and replaced.

The Chair: That's withdrawn and replaced. Just let me check the motion here. This deals with subsection 108(4.1). All in favour of that motion? Carried.

Government motion 132, dealing with subsection 108(8): All in favour of that motion? Opposed? That carries.

Shall section 108, as amended, carry? All in favour? Opposed? That carries.

Moving to section 109: Shall section 109 carry? All in favour? Opposed? That carries.

Section 110, Liberal motion 133, dealing with section 110, paragraph 1: All in favour of that motion? Opposed? That does not carry.

Liberal motion 134, dealing with section 110, paragraph 2: All in favour of that motion? Opposed? That does not carry.

Liberal motion 135, section 110, paragraph 3: All in favour? Opposed? That does not carry.

Liberal motion 136, section 110, paragraph 4: All in favour? Opposed? That does not carry.

Liberal motion 137, section 110, paragraph 5: All in favour? Opposed? That does not carry.

Liberal motion 138, section 110, paragraph 6: All in favour? Opposed? That does not carry.

Liberal motion 139, section 110, paragraph 7: All in favour? Opposed? That does not carry.

Liberal motion 140, section 110, paragraph 8: All in favour? Opposed? That does not carry.

Liberal motion 141, section 110, paragraph 11: All in favour? Opposed? That does not carry.

Liberal motion 142, section 110, paragraph 12: All in favour? Opposed? That does not carry.

Liberal motion 143, section 110, paragraph 13: All in favour? Opposed? That does not carry.

Shall section 110 carry? All in favour? Opposed? That carries.

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Liberal motion 144, subsection 111(1), paragraph 1. All in favour? Opposed? That does not carry.

Liberal motion 145, subsection 111(1), paragraph 1. All in favour? Opposed? That does not carry.

Liberal motion 146, subsection 111(1), paragraph 2. All in favour? Opposed? That does not carry.

Liberal motion 147, subsection 111(1), paragraph 4. All in favour? Opposed? That does not carry.

Liberal motion 148, section 111(1), paragraph 5. All in favour? Opposed? That does not carry.

Liberal motion 149, subsection 111(1), paragraph 7. All in favour? Opposed? That does not carry.

Liberal motion, new section—

Interjection.

The Chair: No. Next section. Sorry.

Liberal motion 150, subsection 111(1), paragraph 8. All in favour? Opposed? That does not carry.

Shall section 111 carry? All in favour? Opposed? That carries.

Liberal motion 151, section 112, subclause (1)(a)(ii). All in favour? That carries.

Liberal motion 152, clause 112(1)(b). All in favour? Opposed? That does not carry.

Government motion 153, subsection 112(2). All in favour? Opposed? That carries.

Government motion 154, subsection 112(3). All in favour? Opposed? That carries.

Shall section 112, as amended, carry? All in favour? Opposed? That carries.

Liberal motion 155, dealing with section 113. All in favour? Opposed? That does not carry.

Liberal motion 156, clause 113(a). All in favour? Opposed? That does not carry.

Government motion 157, clauses 113(a) and (b). All in favour? Opposed? That carries.

Shall section 113, as amended, carry? All in favour? Opposed? That carries.

Liberal motion 158, dealing with subsection 114(1). All in favour? Opposed? That does not carry.

Liberal motion 159, dealing with section 114, subsection (2.1). All in favour? Opposed? That does not carry.

Shall section 114 carry? All in favour? Opposed? That carries.

Liberal motion 160, clause 115(1)(a). All in favour? Opposed? That does not carry.

Liberal motion 161, dealing with clause 115(1)(b). All in favour? Opposed? That does not carry.

Liberal motion 162, dealing with clause 115(1)(c). All in favour? Opposed? That does not carry.

Liberal motion 163, clause 115(1)(d). All in favour? Opposed? That does not carry.

Liberal motion 164, dealing with subsection 115(1.1). All in favour? Opposed? That does not carry.

Liberal motion 165, dealing with subsections 115(1.2) and (1.3). All in favour? Opposed? That does not carry.

Liberal motion 166.

Mr Caplan: Madam Chair, this one was withdrawn and one in the package replaced it.

The Chair: Replaced by?

Mr Caplan: 115(6), paragraph 2.

Interjection: This is a new one?

The Chair: This is the new one we're dealing with. That's Liberal motion 166. All in favour? That carries.

Liberal motion 167, which is subsection 115(8). All in favour of that motion? Opposed? I was busy looking at you, Mr Caplan, because I heard you talking and I wasn't sure if we were completely clear.

Shall section 115, as amended, carry? All in favour? Opposed. That carries.

Moving to section 115.1, which is a new section: Liberal motion 168. All in favour? Opposed? That does not carry.

Moving to 116, Liberal motion 169, which is subsection 116(1.1): all in favour? Opposed? That does not carry.

Liberal motion 170 to subsection 116(2), paragraph 2: all in favour? Opposed? That does not carry.

Shall section 116 carry? All in favour? Opposed. That carries.

On section 116(1), Liberal motion 171, which is new section 116.1: all in favour?

Mr Coburn: Madam Chair, I don't have it.

The Chair: You don't have it? You should have it.

Mr Caplan: I'll read it into the record, Madam Chair, just so everyone can be clear.

Ms Lankin: I can probably help Mr Coburn find it, because his package is in the same order as mine. It's back about four from where we are.

Mr Caplan: I'll still read it into the record, Madam Chair.

I move the bill be amended by adding the following section after section 116:

"Review and appeal

"116.1. The minister shall, by regulation, establish a review and appeal process with respect to decisions of managers under sections 111 to 116."

The Chair: Mr Caplan has read that into the record. This is Liberal motion 171 on section 116.1. All in favour? Opposed? That does not carry.

Sections 117 through 124 inclusive: all in favour? Opposed? They carry.

Section 125 we dealt with at the beginning, so we move to sections 126 through section 128 inclusive. Shall they carry? All in favour? Opposed? They carry.

Section 129, government motion 174, dealing with subsection 129(6): all in favour? Opposed? That carries.

Shall section 129, as amended, carry? All in favour? Opposed? That carries.

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Shall section 130 carry? All in favour? Opposed? That carries.

Section 131, government motion 175, dealing with subsections 131(1) and (2): all in favour? That carries.

Government motion 176, dealing with subsections 131(11), (12) and (13): all in favour? Opposed? That carries.

Shall section 131, as amended, carry? All in favour? Opposed? That carries.

Sections 132 through 134 inclusive: shall they carry? All in favour? Opposed? They carry.

Section 135, dealing with government amendment 177, which is clause 135(2)(d) of the bill: all in favour? That carries.

Shall section 135, as amended, carry? All in favour? Opposed? That carries.

Shall section 136 carry? All in favour? Opposed? That carries.

Section 137, NDP motion 178. All in favour?

Ms Lankin: Dealing with which section?

The Chair: Sorry. NDP motion 178, dealing with clause 137(1)(b): all in favour? Opposed? That does not carry.

NDP motion 179, dealing with clause 137(1)(c): all in favour? That carries.

NDP motion 180 dealing with clause 137(1)(d): all in favour? Opposed? That does not carry.

Interjections.

The Chair: You're perfectly clear on what you just voted on, members of committee?

Interjection: Yes.

The Chair: This is NDP motion number 181, dealing with clause 137(1)(f): all in favour? That carries.

NDP motion 182, which is clause 137(1)(g): all in favour? Opposed? That does not carry.

Government motion 182.1, dealing with clause 137(1)(g): all in favour? That carries.

NDP motion 183, which is 137(1)(h): all in favour? That carries.

Government motion 184, subsection 137(1.1): all in favour? Opposed? That carries.

Shall section 137, as amended, carry? All in favour? Opposed? That carries.

Section 138, NDP motion 185, dealing with subsection 138(5.1): all in favour? Opposed? That does not carry.

Shall section 138 carry? All in favour? Opposed? That carries.

Section 139, NDP motion 186, dealing with subsection 139(1): all in favour? Opposed? That does not carry.

NDP motion 187, dealing with subsection 139(2.1): all in favour? Opposed? That does not carry.

Shall section 139 carry? All in favour? Opposed? That carries.

Section 140, NDP motion 188, which is subsection 140(1): all in favour? Opposed? That does not carry.

Shall section 140 carry? All in favour? Opposed? That carries.

Sections 141 and 142, inclusive: shall those sections carry? All in favour? Opposed? They carry.

Section 143, NDP motion 189, dealing with subsection 143(1.1): all in favour? Opposed? That does not carry.

NDP motion 190, dealing with section subsection 143(3): all in favour? Opposed? That does not carry.

Shall section 143 carry? All in favour? Opposed? That carries.

Section 143.1, government motion 190.1: all in favour? Opposed? That carries.

Interjections.

The Chair: The committee is satisfied with that?

Mr Caplan: Oh yeah, wholeheartedly.

The Chair: Sections 144 and 145, inclusive: shall they carry? All in favour? Opposed? They carry.

On section 145.1, government motion 191: all in favour? Opposed? That carries.

Shall section 146 carry? All in favour? Opposed? That carries.

Section 147: this is NDP motion 192, which deals with subsection 147(2). All in favour? Opposed? That does not carry.

Shall section 147 carry? All in favour? Opposed? That carries.

Sections 148 through 157, inclusive: shall those sections carry? All in favour? Opposed? They carry.

Now we go to section 158, which is government motions 193 and 194, dealing with section 158 of the bill. All in favour? OK. Carried.

Shall section 158, as amended, carry? All in favour? Opposed? That carries.

Section 158.1, which is government motion 195: all in favour? That carries.

Liberal motion 196, which is section 158.1: all in favour? Opposed? That does not carry.

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Sections 159 through 163 inclusive: shall those sections carry? All in favour? Opposed? They carry.

Section 164, government motion 197, which is 164(1), paragraph 1.1: all in favour? Opposed? That carries.

Government motion 198, which is 164(1), paragraph 14.1: all in favour? That carries.

Government motion 199, which is 164(1), paragraph 15: all in favour? Opposed? That carries.

Government motion 200, which is paragraph 17.1 of 164(1): all in favour? This is government motion 200: all in favour? Opposed?

Government motion 201, which is 164(1), paragraph 19.1: all in favour? Opposed? That carries.

Government motion 202, 164(1), paragraph 23: all in favour? Opposed? That carries.

Government motion 203, which is 164(1), paragraphs 30 and 31: all in favour? Opposed? That carries.

Government motion 204, which is 164(2), paragraph 0.1: all in favour? Opposed? That carries.

Government motion 205, which is 164(2), paragraph 1: all in favour? Opposed? That carries.

Shall section 164, as amended, carry? All in favour? Opposed? That carries.

Mr Coburn: Madam Chair, I'd like to get unanimous consent to reopen section 1.

Ms Lankin: Don't we need to go to the end of the package before that?

Mr Coburn: Do we have to go to the end?

Ms Lankin: I'm having a hard enough time following the paper flow here, Brian, you know.

Mr Caplan: We've still got another 20 amendments to go.

Ms Lankin: We just want to make sure you pass those other amendments you said you were going to.

The Chair: I gather there isn't unanimous consent at this time, so we'll go back to consideration of clause-by-clause.

We're dealing with government motion 205.1 which is—

Ms Lankin: This replaces the NDP motion.

The Chair: OK. So this is subsection 165(2), paragraph 4.1: all in favour? That carries.

Then 205.2, which is 165(2), paragraph 10.1: all in favour? Carried.

Shall section 165, as amended, carry? All in favour? Opposed? That carries.

Section 166, government motion 206 dealing with subsection 166(1) paragraph 2: all in favour? That carries.

Government motion 207, 166(1), paragraphs 3, 3.1 and 3.2: all in favour? That carries.

Government motion 208, dealing with subsection 166(1), paragraphs 10.1 and 10.2: all in favour? That carries.

Government motion 209, which is subsection 166(1), paragraph 10.3: all in favour? Opposed? That carries.

Government motion 210, subsection 166(2), paragraph 1: all in favour? That carries.

Government motion 211, which is subsection 166(4): all in favour? Opposed? That carries.

Shall section 166, as amended, carry? All in favour? Opposed? That carries.

Section 167. Government motion 212, dealing with section 167, paragraph 5.1: all in favour? Opposed? That carries.

Shall section 167, as amended, carry? All in favour? Opposed? That carries.

Section 168. Government motion 213, which is section 168, paragraph 8: all in favour? Opposed? That carries.

Shall section 168, as amended, carry? All in favour? Opposed? That carries.

Shall sections 169 and 170, inclusive, carry? All in favour? Opposed? They carry.

Section 171, Liberal motion 214, which deals with subsection 171(1.1).

Mr Caplan: These pertain to amendments to the Tenant Protection Act, the so-called Tenant Protection Act, 1997.

The Chair: All in favour? Opposed? That does not carry.

Government motion 215 and 216, dealing with subsection 171(2).

Mr Gerretsen: I can't read the bottom half of that page at all.

Mr Caplan: I have a better copy for you if you need it.

The Chair: Would you like it rephotocopied?

Mr Caplan: I took a look at it. It's OK.

The Chair: Are you sure? All in favour? That carries.

Liberal motion 217, dealing with subsection 171(3): all in favour? Opposed? That does not carry.

Liberal motion 218, dealing with subsection 171(4): all in favour? Opposed? That does not carry.

Liberal motion 219, which is subsection 171(6): all in favour? Opposed? That doesn't carry.

Liberal motion 220, which is subsection 171(7): all in favour? Opposed? It doesn't carry.

Liberal motion 221, which is subsection 171(8): all in favour? Opposed? It doesn't carry.

Shall section 171, as amended, carry? All in favour? Opposed?

Mr Caplan: I'm sorry. What was the—

The Chair: Ah, you weren't listening.

Mr Caplan: I was conferring. You're opposed? Good.

The Chair: It carries.

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Members of committee, I'm just reminded that I have here the last page of an amendment that was not actually moved, which is a new amendment to subsection 51(11) of the bill.

Ms Lankin: This is a section that's been passed already, is it?

The Chair: Yes.

Mr Caplan: What section was this? Can you repeat that?

Ms Lankin: We would want to have unanimous consent for this.

The Chair: It says, "I move that subsection 51(11) of the bill be amended by striking out "the earlier of the date the local housing corporation was incorporated and" near the end.

Mr Caplan: That was dealt with. It's in here already. We've already done it. We did it already.

The Chair: I just need a clarification.

Mr Caplan: No, it's been dealt with. It was dealt with as a government amendment.

The Chair: I need your confirmation that it's withdrawn, Mr Caplan.

Mr Caplan: I withdraw it. You bet. The government already passed this.

The Chair: Mr Caplan's withdrawn it.

Sections 172 and 173.

Interjections.

The Chair: Shall sections 172 and 173, inclusive, carry? All in favour? Opposed? They carry.

Shall the long title carry?

Interjections.

The Chair: Before we do the long title, is there any other—

Mr Coburn: Yes, Madam Chair.

Ms Lankin: You're so accommodating.

The Chair: Mr Coburn, this is the time to do it.

Mr Coburn: Where I come from, you go on a little bit of respect. Now that I've mentioned it, I expect you to come back to it.

Madam Chair, I'd like unanimous consent to reopen section 1.

The Chair: Is there unanimous consent? OK, we have unanimous consent to reopen section 1.

Mr Caplan: I have an amendment to section 1, Madam Chair. Shouldn't we just drop it, though?

The Chair: Is there any debate or amendment? If not, I'm going to put the question.

Ms Lankin: The only reason I gave unanimous consent is that even an odious bill has a purpose to it. It may be an odious purpose, but it has a purpose.

The Chair: Do we have to deal with amendments? No amendments.

Shall section 1 carry?

Mr Gerretsen: Just a minute. What's the longest time we can debate this?

Mr Caplan: I'll pour you some water if you want to get going, John.

The Chair: Shall section 1 carry? All in favour? Opposed? That carries.

Ms Lankin: Madam Chair, can I just say well done. That was quite amazing. You really got in the groove there. Well done.

The Chair: We haven't quite finished. We just have the long title to do. Shall the long title of the bill carry? All in favour? Opposed? That carries.

Shall Bill 128, as amended, carry?

Mr Caplan: Recorded vote, please.

Ayes

Coburn, DeFaria, Wettlaufer, Wood.

Nays

Caplan, Gerretsen, Lankin.

The Chair: That carries. Shall I report the bill, as amended, to the House? All in favour? Opposed? That carries.

Thank you for your patience, members of committee.

The committee adjourned at 1955.

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Journal des débats (Hansard)

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**Standing committee on
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Tuesday 5 December 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Mardi 5 décembre 2000

*The committee met at 1610 in room 151.*LABOUR RELATIONS
AMENDMENT ACT, 2000LOI DE 2000 MODIFIANT LA LOI
SUR LES RELATIONS DE TRAVAIL

Consideration of Bill 139, An Act to amend the Labour Relations Act, 1995 / Projet de loi 139, Loi modifiant la Loi de 1995 sur les relations de travail.

The Chair (Ms Marilyn Mushinski): We'll call the meeting to order. This is a meeting of the standing committee on justice and social policy to deal with clause-by-clause consideration of Bill 139, an Act to amend the Labour Relations Act, 1995. I will read into the record the proceedings for this afternoon:

"That, at 4:30 pm, on the day designated by the committee for clause-by-clause consideration of the bill, those amendments which have not been moved shall be deemed to have been moved and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill, and any amendments thereto. Any division required shall be deferred until all remaining questions have been put and taken in succession with one 20-minute waiting period allowed pursuant to standing order 127(a)."

In the interest of time, I know there probably are members of the committee who would like to address the committee before 4:30, so without further ado—I see that we haven't got anybody here from the Liberal side yet, but I will allocate six minutes for each party. We'll start with you, Mr Christopherson, since the Liberal member is not here.

Mr David Christopherson (Hamilton West): Actually, given the very few moments that we have, quite frankly, I have given most of my comments with regard to how totally clear it is that the government, with Bill 139, continues their attack on unions, people who are in unions, and in particular with Bill 139, construction unions. I am not going to repeat all that over and over. What I would like to do perhaps with the time that's left is ask the government to present their amendments so that we at least understand the rationale behind the amendments.

This is a charade. This really is a charade. So for the 15 minutes that we're going to do this little public

monkey act here, let's at least have some rationale on the record for the amendments that are being rammed through along with the rest of the bill.

The Chair: Do we have a speaker from the government?

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): I know that because of certain of the House duties the meeting got delayed.

There are a couple of things I'd like to mention, before we get into the amendments perhaps, about what this bill does, Bill 139, An Act to amend the Labour Relations Act, 1995. I'll touch upon and highlight a couple of things.

One of the things, as we have discussed in the House as well, is decertification changes. What this bill does, basically, is allow people in the workplace to know about the decertification process. We felt that there's enough information available for certification, and the employers told us that according to the law they could not in the past say anything about decertification. So this bill levels the playing field, where the employees will have the opportunity and the information that they may need to decertify a union. It also gives three months before the end of the contract. It used to be two months. So we have given that extension in this bill, if it passes. Instead of two months, people now have three months to make up their mind and apply in time if they want to decertify a union or if they would rather have a different union. This bill hopefully allows them that, if passed.

It also gives people vote clarity in the sense that the question is not lumped together with the employees if they reject the offer. They may want to go back; they may want the union to go back and have another kick at the can rather than saying, "Just because we rejected it, it should not be automatically taken as a strike vote." We're hoping that this bill, if passed, will allow that.

Another benefit some of the jurisdictions are having—and one of those is Sarnia, and perhaps Marcel Beaubien would want to touch upon that later on—is that because of the global nature of business these days, companies can set up business on both sides of the border if they want to. In this case I'm sure Liberal member Caroline Di Cocco might want to speak on that as well. This allows management and the unions to come to an agreement and deviate from a contract that they had, if they all agree, so that they could get into a new agreement to make perhaps the labour component of the total contract

maybe more attractive so that they can win these contracts. It is better for the workers to be working rather than having very high salaries and not working. This bill hopefully will allow that in terms of having the project agreement being able to do that. So there are a few things that we're bringing in.

Salary disclosure: Just like the public sector employees, we are asking that the salaries and benefits of the union management, if they are earning more than \$100,000, be disclosed so that the employees know whether they're getting the best bang for their buck, getting value for their money. That in a nutshell is what this bill allows, if passed.

Marcel, did you want to shed some more light?

Mr Marcel Beaubien (Lambton-Kent-Middlesex): No. We've all got six minutes, and I'll give the Liberal side their six minutes.

The Chair: There are no further speakers? Mr Agostino, did you wish to speak?

Mr Dominic Agostino (Hamilton East): Yes, we'll spend a few minutes each on this. We haven't got a lot of time here, as usual.

One of the most interesting points in all this was I believe the acknowledgement at the announcement by the minister that this bill was strictly asked for by business, that the consultation basically took place with business. So it's a bill for business, by business, catered to by this government. Those are not our words. That was the admission of the minister when asked. He was also asked to give examples of where there have been problems, and after about two or three minutes of hemming and hawing he could not come up with one specific example of a problem that prompted this bill to come forward.

Really, this salary disclosure sunshine law is a red herring; there's no real objection to that. I think you will find that most union leaders either have or will be more than pleased to, and despite the belief of the government members, frankly I think you'll be surprised at their salary levels and the few that will be required to be disclosed over the \$100,000, unlike most of the senior staff in the Premier's office who drafted this legislation.

What this is going to do, particularly with concern to the area of safety, part of this is going to allow what I believe to be more non-unionized construction companies and contractors on job sites. The minister likes to say that there really isn't a correlation between unionized and non-unionized sites and injuries. I want to go back to the statement I made earlier that last year 18 of the 20 deaths in the construction industry occurred in non-unionized construction sites. The minister says, "That's not a fair statement because it's disproportionate. There are more non-unionized sites," and there are, but 18 out of 20 is a significant percentage, I would suggest—90%. I can tell you the gap between unionized and non-unionized construction sites is not 90%, by any stretch of the imagination. An inordinately high number of deaths occurred on non-unionized construction sites. Clearly there's a health and safety danger here. It is an attempt to destabilize what I think have been very good contracts and good labour relations over the last few years.

1620

What I find amazing in all this—and I'll wrap up—is how this government wraps this up as trying to protect taxpayers: "The reason we are allowing a greater opportunity for non-unionized companies to bid on school boards, municipal projects and hospitals is because we are concerned for the taxpayers." What I find interesting in that statement—they threw out a little line in there—is banks. Those poor banks that just cannot rake in the billions quickly enough need the protection of this government, or is it simply that maybe they need the protection of this government so they can continue to spend \$25,000 a table for the Premier's dinner? That is maybe the rationale why banks are included in this.

This is nothing more than simply a wish list. This was drafted on Bay Street, for Bay Street, and then handed to the cabinet and rubber-stamped by Mike Harris as a payback to his friends for political contributions.

Ms Caroline Di Cocco (Sarnia-Lambton): To me, this is another piece of what I consider anti-labour legislation. I heard the discussion of project agreements. We have come to project agreements in my riding, between unions and with industry. This perspective that we've got to take unionized labour, which has, I believe, added a great deal to progressive—I won't say legislation, but certainly inroads. They've made huge inroads when it comes to ensuring that people make a fair wage, that they have benefits and health and safety. All of these aspects have been good for families in Ontario, and unions have done that.

I come from a business family that runs a unionized construction company. The whole aspect of skilled labour—I have heard many mid-sized business saying, "We prefer having good, skilled labour. It doesn't matter that we're going to pay them some extra money to do the job, because they are part of that sustainable economic development."

One of the things I find incredible is, I don't know if you really want to create what I call a good society—and I've said this in the House as well—but why not bring non-unionized workers up to the standard of unionized labour, rather than just saying, "Well, we have to bring in this legislation because we have to be competitive"? But it is always competition on the backs of workers. This is where I fundamentally disagree with the Conservative ideology that unions are bad. We hear in the House things like "union bosses" and "business professionals." There's no balance. There is no acceptance, in my estimation, of the positive inroads in this age of competition.

What I'm finding in Sarnia-Lambton—and I just toured Dow Chemical with the plant manager. They all laud the level of skilled labour we have in our community, and the standards. A lot of that is due to organized labour, to organized workers. As a collective, they've made inroads, and I believe the Conservative ideology is to erode that. That's the intent. Give them less power so that the mechanism, the safety issues or all of these things, well, they'll have to deal with them on an individual basis. It's this individualism: "You'll have to

look after yourself. You don't want unions to look after you. After all, that's anti-democratic." You phrase it all around this terminology, and I fundamentally disagree.

This labour legislation, Bill 139—and there's 69 and 147—does the same thing. It erodes the inroads. It erodes what has worked. What I find incredible is that as we move into this skilled worker shortage that we're going to have in this province, in this country—it is happening—we are actually bringing in legislation that's contrary to a productive workforce that is protected and well paid. It is almost as if people don't deserve to get a good wage. They should be happy with minimum wage or they should be happy with \$10 an hour.

We did a study in Sarnia-Lambton with the Council for Economic Renewal. I was on one of the teams. The study was to look at industry, businesses, and find out what obstacles were there to moving economic development ahead. Some 87% of the people we interviewed were non-union. Do you know what their biggest complaint was? It was labour costs. Some of them were paying their employees \$7, \$8 and \$9 an hour, but still it was the issue of labour costs. I humbly submit that workers have a right to earn a fair wage, to the best possible health and safety standards, and we shouldn't be bringing them to the lowest common denominator.

I see this legislation. There are little bits in it that are quite good, but you mask it with unacceptable anti-labour legislation. I suggest to the Conservative ideology that we really need to take a look at what the future is about when it comes to the economic engine, which is made up of labour and business.

This whole idea that unionized is somehow the wrong way to go and non-unionized is what we want to encourage—"We want to encourage democracy in the workplace"—is wrong-minded. That's about all I have to say on that matter.

The Chair: Mr Christopherson, did you have anything else to add?

Mr Christopherson: I would only respond to the parliamentary assistant's comments and suggest to him that the notion of handing out information about how to decertify coming from this government is not taken by anyone in Ontario as just providing information. When you link that with extending the period of time that a decert application can be made, no one is fooled. Everybody knows. You were unmasked as a government a long time ago. With the kind of track record you have in terms of labour legislation that has taken away worker's rights time after time—and we could sit here and I could go for an hour just listing the number of changes and rights that you've taken away from workers—for you to suggest that somehow you have an altruistic motive here, that you're just trying to help people, is not going to fool anyone.

You are doing everything you can to destabilize the labour movement, and the reason is quite apparent. You've decimated virtually everybody else out there. The only organized group that has the infrastructure, the communications ability and the leadership skills to challenge you is the labour movement.

You win two things by going after them. You help your friends, and they return those favours by giving you money for your re-election. This is very much about money. You changed the election laws so that corporations can contribute 50% more money than they could before. You changed that law without the unanimous agreement of all three parties in the House, which is the first time in the history of Ontario that's ever happened.

Then you shortened the period of time in which an election would be held, putting even greater emphasis on the value of advertising, thereby giving you a distinct advantage. You've got more money because you changed the law that lets people contribute more.

This is payback. This is all about payback. The eight general contractors that benefit the most from Bill 69 were giving you over \$100,000, just those eight general contractors alone. So don't pretend that this is all about trying to do anybody a favour.

The whole notion of talking about how much money people make, the labour movement is not shook by this. You announced it like: "Oh boy, we are going to get them now. We've really got them on the run." I don't get any phone calls. This is not raised by anyone. It's there for anyone to see. In fact, if this government had one drop of the democracy that the Ontario labour movement has, you'd be a much better government. A pox on you totally because this is just clearly going after workers.

While I've got the moment, you talk about—

The Chair: You have 30 seconds.

1630

Mr Christopherson: I'll take it. You say having a job at a lower pay is better than no job whatsoever. That's the same argument we heard at the turn of the century, when the labour movement was first introduced into this province, where employers said, "If you don't like the working conditions and the money we make here, you can go work somewhere else, because we've got somebody else who will come in."

This is all about watering down the value of labour, the value of workers, and that's a benefit to your political friends. Everything else you said before that is just a lot of spinning and nonsense, and you need to know that you're not fooling anyone. It would be interesting to hear a little more from Mr DeFaria, who happens to represent a lot of the workers who are impacted by this. I'd like to hear how he defends his government's actions that are hurting the very constituents he represents.

The Chair: Thank you, Mr Christopherson. It is 4:30, so we now will move into clause-by-clause consideration.

Members of committee, I'm open to suggestion. We can go through this section by section or we can collapse the sections to the point of amendment. Is it the wish of committee that we go from section 1 through to 22 inclusive and then deal with those sections that have amendments? Is that—

Mr Christopherson: I'd like to vote. You're asking to forfeit voting on each section separately?

The Chair: Yes.

Mr Christopherson: I disagree. I want a separate vote on each, and recorded.

The Chair: You want a separate vote on each? OK, that's fine.

Mr Christopherson: I don't know if you heard me, Chair. I was also requesting that there be a recorded vote on each one.

The Chair: You want a recorded vote on everything, Mr Christopherson?

Mr Christopherson: Yes, I would, Chair.

The Chair: Then we'll start with section 1.

Shall section 1 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 2 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 3 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 4 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 5 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 6 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 7 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 8 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 9 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 10 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 11 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 12 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 13 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 14 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 15 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 16 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 17 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 18 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 19 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 20 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 21 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 22 carry, as amended?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Government amendment number 1.

Mr Gill: I have an amendment. I move—

The Chair: I'm sorry, you can't speak to any amendment after 4:30, Mr Gill. This is government amendment number 1.

Mr Christopherson: On a point of order, Chair: Are you telling us that we won't be given an opportunity to speak to any of these?

The Chair: That's correct.

Mr Christopherson: And that would be because, why?

The Chair: Because, as I read, the order of the House stated, "At 4:30 pm on the day designated by the committee for clause-by-clause consideration of the bill, those amendments which have not been moved shall be deemed to have been moved and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto."

Mr Christopherson: Just so I'm 100% clear and anyone else who is watching, the time allocation motion shut down debate in the House, denied anybody from the public a chance to speak to this committee, and we're all muzzled from speaking to these amendments that have been tabled today. Is that correct?

The Chair: As I read, Mr Christopherson, there is no further debate or amendment other than what is already deemed to have been moved.

We will now consider government motion number 1.

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 23, as amended, carry?

1640

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 24 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 25 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 26 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 27 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 28 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 29 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 30 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 31 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 32 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 33 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 34 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Government amendment number 2?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 35, as amended, carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 36 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 37 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 38 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Government amendment number 3?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 39, as amended, carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Government amendment number 4?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 40, as amended, carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall section 41 carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

Shall the title of the bill carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: Shall Bill 139, as amended, carry?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: Shall I report the bill, as amended, to the House?

Ayes

Beaubien, DeFaria, Elliott, Gill.

Nays

Agostino, Christopherson, Di Cocco.

The Chair: That carries.

The meeting is adjourned.

The committee adjourned at 1647.

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First Session, 37th Parliament

Assemblée législative de l'Ontario

Première session, 37^e législature

Official Report of Debates (Hansard)

Monday 11 December 2000

Journal des débats (Hansard)

Lundi 11 décembre 2000

**Standing committee on
justice and social policy**

Domestic Violence
Protection Act, 2000

**Comité permanent de la
justice et des affaires sociales**

Loi de 2000 sur la protection
contre la violence familiale

Chair: Marilyn Mushinski
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Monday 11 December 2000

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Lundi 11 décembre 2000

*The committee met at 1536 in room 151.*DOMESTIC VIOLENCE
PROTECTION ACT, 2000LOI DE 2000 SUR LA PROTECTION
CONTRE LA VIOLENCE FAMILIALE

Consideration of Bill 117, An Act to better protect victims of domestic violence / Projet de loi 117, Loi visant à mieux protéger les victimes de violence familiale.

The Chair (Ms Marilyn Mushinski): I call the meeting to order. This is a continuation of clause-by-clause consideration of Bill 117, An Act to better protect victims of domestic violence. I should just read into the record the order that was passed last week.

"That, pursuant to standing order 46 and notwithstanding any other standing order or special order of the House relating to Bill 117, An Act to better protect victims of domestic violence, when the standing committee on justice and social policy next meets for the purpose of considering the bill, the Chair shall put every question necessary to dispose of this stage of the bill without further debate or amendment; and

"That, any divisions required shall be deferred until all remaining questions have been put and taken in succession with one 20-minute waiting period allowed pursuant to standing order 127(a)."

At the last committee meeting, we were at section 4, Liberal amendment 5, which had been moved by Mr Bryant. We will take the vote on that amendment.

Mr Michael Bryant (St Paul's): Madam Chair, can we get a recorded vote on that amendment?

The Chair: You may certainly have a recorded vote on that, yes. In other words, you want recorded votes on every clause?

Mr Bryant: No, just on this amendment.

The Chair: OK. If it's a recorded vote, we have to stand this down until the end. So we'll move on.

Shall section 5 carry? All in favour? Opposed? That carries.

Shall section 6 carry? All in favour? Opposed? That carries.

Shall section 7 carry? All in favour? Opposed? That carries.

Shall section 8 carry? All in favour? Opposed? That carries.

Shall section 9 carry? All in favour? Opposed? That carries.

Shall section 10 carry? All in favour? Opposed? That carries.

Shall section 11 carry? All in favour? Opposed? That carries.

Would members of the committee prefer, rather than going through section by section, that we go right through, inclusive, except for the amendment?

Mr Peter Kormos (Niagara Centre): With respect, Chair, I think you're bound by the motion that the majority brutally imposed upon the minority in terms of time allocation, which would require you to put them section by section.

The Chair: But if I got unanimous consent, we could go from section 12 through section 24, inclusive, if committee, in the interests of time—you want to go clause-by-clause? That's fine.

Then, shall section 12 carry? All in favour? Opposed? That carries.

Shall section 13 carry? All in favour? Opposed? Carried.

Shall section 14 carry? All in favour? Opposed? Carried.

Shall section 15 carry? All in favour? Opposed? That carries.

Shall section 16 carry? All in favour? Opposed? That carries.

Shall section 17 carry? All in favour? Opposed? That carries.

Shall section 18 carry? All in favour? Opposed? That carries.

Shall section 19 carry? All in favour? Opposed? That carries.

Shall section 20 carry? All in favour? Opposed? That carries.

Shall section 21 carry? All in favour? Opposed? That carries.

Shall section 22 carry? All in favour? Opposed? That carries.

Shall section 23 carry? All in favour? Opposed? That carries.

Shall section 24 carry? All in favour? Opposed? That carries.

We go back to Liberal amendment 5, as moved by Mr Bryant. Shall that amendment carry?

Mr Kormos: Recorded vote.

The Chair: Yes, we'll take the recorded vote.

Ayes

Bryant, Kormos, McLeod.

Nays

Dunlop, Elliott, Molinari, Tilson.

The Chair: That does not carry.

Shall section 4 carry? All in favour? Opposed? That carries.

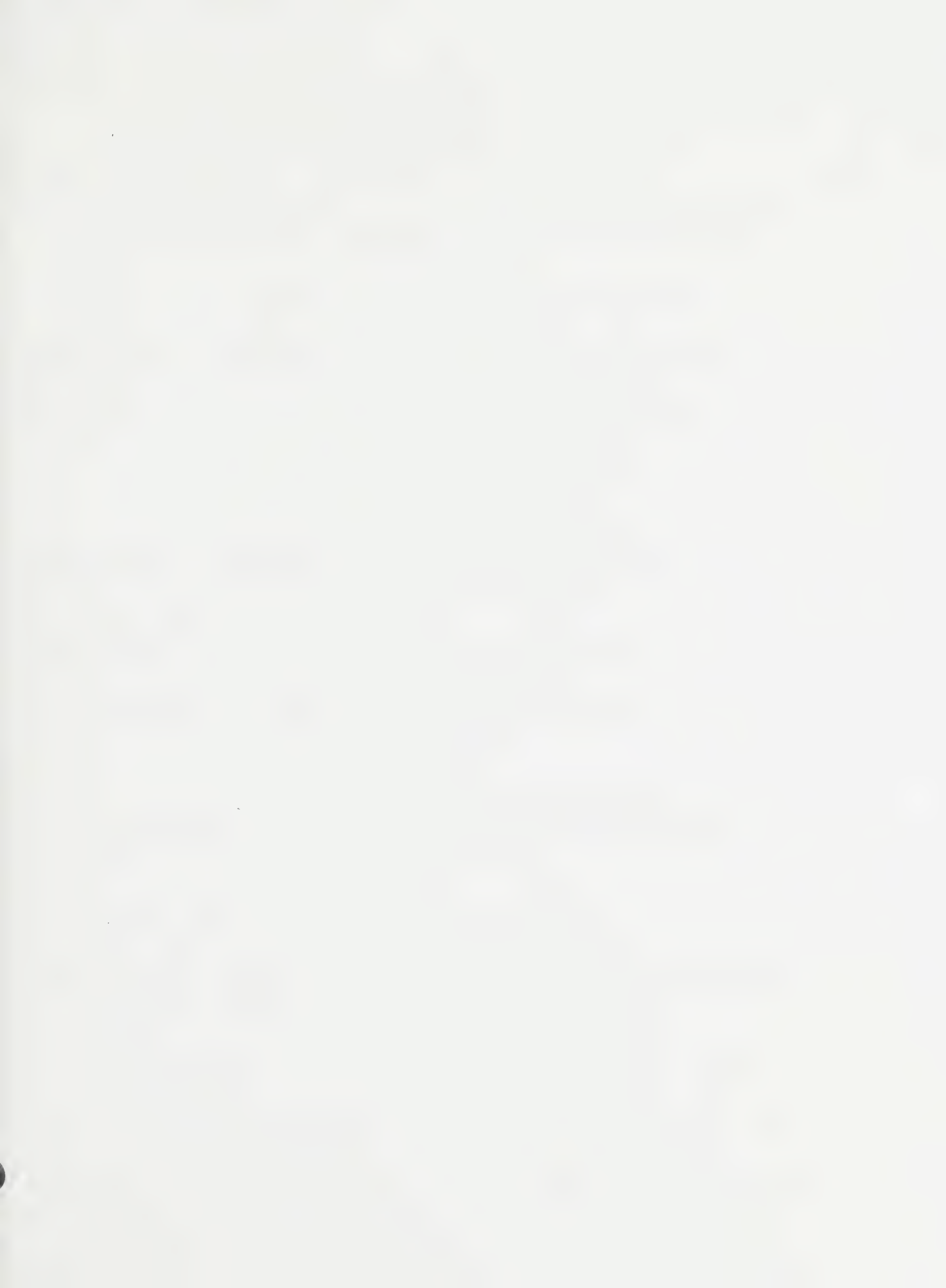
Shall the title of the bill carry? All in favour? Opposed? That carries.

Shall Bill 117, as amended, carry? All in favour? Opposed? That carries.

Shall I report the bill, as amended, to the House? All in favour? Opposed? That carries.

The meeting is adjourned.

The committee adjourned at 1543.



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Thursday 15 February 2001

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Jeudi 15 février 2001

The committee met at 1006 in the Ramada Inn, Sault Ste Marie.

SUBCOMMITTEE REPORTS

The Chair (Ms Marilyn Mushinski): I call the meeting to order.

Good morning, ladies and gentlemen. This is the standing committee on justice and social policy to consider Bill 118, An Act to amend the Child and Family Services Act.

The first item of business is the subcommittee reports on Bill 118 and Bill 155. Mr DeFaria.

Mr Carl DeFaria (Mississauga East): Madam Chair, I am pleased to move the report of the subcommittee.

Your subcommittee met on Monday, January 22, 2001, to consider the method of proceeding on Bill 118, An Act to amend the Child and Family Services Act, and recommends the following:

(1) That the committee meet in Sault Ste Marie on February 15, and that the committee meet in Toronto on February 19, for the purpose of holding public hearings.

(2) That the clerk have an advertisement placed once in the major English daily paper in Thunder Bay, Sault Ste Marie, Sudbury, Timmins and North Bay. The advertisement will also be placed once in a French weekly paper that covers the north. The advertisement will also be placed on the Ontario parliamentary channel and on the Internet.

(3) That the deadline for witnesses to request an appearance before the committee is February 9 at 12 noon.

(4) That the deadline for written submissions is February 28.

(5) That on February 19, the Minister of Community and Social Services and the Attorney General be invited for 30 minutes each to make presentations to the committee. Following these presentations, the two opposition parties will have 20 minutes each to make statements and ask questions.

(6) That on February 2 at 12 noon, each party will provide the clerk with a prioritized list of those witnesses from whom they would like to hear. Using these three lists, as well as the names of those people who have contacted the clerk directly, the Chair, Mr Martin, and the clerk will determine who to schedule and how long they will have to present. As a guideline, individuals may

receive 10 minutes and groups may receive 20 minutes in which to make their presentations.

(7) That the Chair is to evaluate requests by witnesses to have their expenses paid by the committee on a case-by-case basis.

(8) That the legislative research officer prepare a research paper on other jurisdictions as soon as possible and provide a summary of recommendations by March 5.

(9) That amendments be filed with the clerk by Monday, March 19.

(10) That there be an opportunity for each party to take 15 minutes to make opening comments at the beginning of the clause-by-clause process.

(11) That the clerk has the authority to begin implementing these decisions immediately.

(12) That the information contained in this subcommittee report may be given out to interested parties immediately, as opposed to after the committee has voted on it.

(13) That the Chair, in consultation with the clerk, has the authority to make any other decisions necessary with respect to this bill.

I am pleased to move this report of the subcommittee, Madam Chair.

The Chair: Thank you, Mr DeFaria.

All in favour? That carries.

For the record, Mr DeFaria, if you could also read the subcommittee report for Bill 155.

Mr DeFaria: Madam Chair, I am also pleased to move the report of the subcommittee on Bill 155.

Your subcommittee met on Monday, January 22, 2001, to consider the method of proceeding on Bill 155, An Act to provide civil remedies for organized crime and other unlawful activities, and recommends the following:

(1) That the committee meet on February 20, 21, 26, 27 and 28 for the purpose of holding public hearings. The first two days will be spent in Toronto while the latter three days will be spent travelling. The committee intends to go to Niagara Falls, Ottawa and Sudbury.

(2) That the clerk have an advertisement placed once in the major English daily paper in Thunder Bay, Sault Ste Marie, Sudbury, Timmins, North Bay, Niagara Falls, and Ottawa. The advertisement will also be placed in the Toronto Sun, the Toronto Star, the Globe and Mail, and the National Post. If available, French newspaper advertisements will be placed in the above-noted areas. The advertisement will also be placed on the Ontario parliamentary channel and on the Internet.

(3) That the deadline for witnesses to request an appearance before the committee is February 9 at 12 noon.

(4) That on February 7 each party give the clerk a prioritized list of the witnesses they would like to hear from. The clerk will begin to fill approximately 75% of the agenda with these selections.

(5) That on February 9 the clerk will provide each party with a list of those groups and individuals who contacted the clerk to request an appearance before the committee. On February 12 at 12 noon, each party will provide the clerk with a second prioritized list of the witnesses that they would like to hear from. This second list may only be selected from among those groups and individuals who contacted the clerk directly. These lists will be used to fill approximately 25% of the agenda.

(6) That on February 20 the Attorney General be invited for 10 minutes to make a presentation to the committee. The opposition parties will then have 10 minutes to make statements and ask questions. Ministry staff will then be offered one hour to answer questions and make statements.

(7) That individuals have 10 minutes in which to make their presentation and groups have 20 minutes in which to make their presentations. The Chair has some discretion as to how time is allotted.

(8) The Chair will authorize payment of reasonable requests by witnesses to have their expenses paid by the committee.

(9) That the legislative research officer will prepare a research paper on other jurisdictions, specifically focusing on the United States of America and Britain. The researcher will also provide a summary of recommendations. Both papers are requested as soon as possible.

(10) That amendments should be filed with the clerk by Monday, March 19 at 12 noon.

(11) That clause-by-clause consideration of the bill commence on March 26.

(12) That there be an opportunity for each party to take five minutes to make opening comments at the beginning of the clause-by-clause process.

(13) That the clerk has the authority to begin implementing these decisions immediately.

(14) That the information contained in this subcommittee report may be given out to interested parties immediately, as opposed to after the committee has voted on it.

(15) That the Chair, in consultation with the clerk, will make any other decisions necessary with respect to this bill.

I move, Madam Chair, the report of the subcommittee.

The Chair: Thank you, Mr DeFaria.

All in favour? That carries.

We'll move to public presentations and—

Mr Bob Wood (London West): Madam Chair, I notice we have a presentation at 1:00 and then a blank at 1:20, and I'm wondering if it might be possible to move the Algoma Health Unit to 1:20 rather than 1:00, which will give us a little longer period over the noon hour that's uninterrupted.

The Chair: We'll certainly check into that, Mr Wood, and get back to you.

Mr Wood: Could you let us know prior to adjournment so we know how much time we have for lunch?

The Chair: Yes, we will.

Mr Tony Martin (Sault Ste Marie): Madam Chair, I just wanted to raise an issue at the very beginning of these hearings so that we might perhaps think about it and together find a way to resolve it, if it in fact becomes the issue that I think it may. Perhaps we could get some direction from the parliamentary assistant, Mr Maves, on this.

As you know, this piece of legislation has some significant and important ramifications re the ability of the, in particular, children's aid society to respond to indications that there is abuse happening within institutions. As long as their hands continue to be tied in the way that they will share today and Monday, children are at risk.

It sounds to me like the government may be intending to prorogue before the House actually comes back, whenever it comes back. That means, as you know, that all bills will die, including this one. Is there any thought being put into, or consideration given to, perhaps trying to save a few bills that might be of import, particularly a bill like this one? I feel—I think we all around this table feel—that if it becomes obvious to us during the two days of hearings it needs to be implemented immediately in order to further protect children, something might be done to that effect.

The Chair: Obviously, as Chair I can't comment on that, Mr Martin. Mr Maves, would you care to respond to that?

Mr Bart Maves (Niagara Falls): I don't know if it's the intention of the House leader to prorogue or not. I'd be happy to make representation to him that if indeed that is his intention, he give serious consideration to carrying this bill over.

Mr Martin: Okay, I appreciate that.

The Chair: Thank you, Mr Martin and Mr Maves. That puts us about two minutes early, rather than the five.

CHILD AND FAMILY SERVICES AMENDMENT ACT, 2000

LOI DE 2000 MODIFIANT LA LOI SUR LES SERVICES À L'ENFANCE ET À LA FAMILLE

Consideration of Bill 118, An Act to amend the Child and Family Services Act / Projet de loi 118, Loi modifiant la Loi sur les services à l'enfance et à la famille.

CHILDREN'S AID SOCIETY OF ALGOMA— CENTRAL DISTRICT

The Chair: Can I assume that representatives from the Children's Aid Society of Algoma—Central District are here? Hugh Nicholson, executive director, Jim Baraniuk, director of services, and Nadine Gareau, solicitor, would you like to come forward, please?

Good morning. You have 20 minutes to make your presentation. Questions will be asked by the committee.

Mr Hugh Nicholson: Thank you, Madam Chair. I'm Hugh Nicholson, the executive director of the Children's Aid Society of Algoma. Sitting next to me is Nadine Gareau, our legal counsel, and Jim Baraniuk, our director of services for the children's aid society.

I'd like to thank the standing committee on justice and social policy for holding a hearing on Bill 118 in Sault Ste Marie. This hearing is important to us because it gives members of the community who have been affected by institutional abuse the opportunity to talk directly to members of the Ontario Legislature and to see first-hand that positive action is being taken on a matter which is very important to them.

I also wish to thank our MPP, Tony Martin, for bringing this bill forward, and all three parties for setting partisan politics aside when they voted on this legislation.

The Children's Aid Society of Algoma believes that the current laws do very little to protect children in institutional settings from abuse. When we consider Grandview school for girls, Pelican Lake school, Ernest C. Drury School for the Deaf, St Ann's Residential School, St Joseph's Training School for Boys, as well as the court cases in Sault Ste Marie, we cannot escape the fact that this is a recurring reality.

History has shown us institutional abuse often continues for years, and in some cases 10 to 20 years, before the offender is brought to justice. Many children's lives are permanently damaged. Over the period in which abuse takes place, people do come forward but are not believed. Finally, although it's a very small percentage of caregivers, it happens more frequently than we would like to believe.

It's simply unacceptable to allow this level of abuse to continue for so long before corrective action is taken. The amendments to the Child and Family Services Act proposed in Bill 118 would allow children's aid societies to step in quickly and institute the measures necessary to prevent abuse before it happens or stop it before it becomes widespread.

1020

From our experience in investigating reports of institutional abuse by caregivers, we are well aware of some of the dynamics that lead to the situations we described earlier. Co-workers are often reluctant to report abuse because of friendships, loyalties, career concerns and peer pressures; organizations are often reluctant to acknowledge the facts, and at times even investigate them, because of threats of legal action, labour relations issues and exposure to suits from parents; some abusers are charismatic and influential staff who are well respected by other staff and children; and parents are often nervous about pursuing issues because of threats of legal action by both the institution and the caregiver. They also tell us that pushing the issue will only make things worse for their children.

As a consequence, some strong incentives exist to rationalize the actions of the abuser, discredit children

and parents who report these concerns, and ignore the facts. In some instances this is overt, and in other instances it's quite subtle. The institutions and staff have only to ignore one situation before they find themselves compromised and legally liable, which at times can be a further incentive to suppress the facts. Under the current legislation, there's little that children's aid societies can do to protect children in institutional settings from abuse.

I'll now ask Jim Baraniuk, our director of services, to explain the limitations of the current legislation and how Bill 118 addresses the problems. In December, we also submitted a written response to Bill 118 in which we suggested some changes in wording. Mr Baraniuk will also provide some information on these recommendations.

Mr Jim Baraniuk: Abuse in institutions has been well documented. It is something this community is acutely aware of, and you'll hear of that today. This raises questions about how children are being protected in caregiving institutions.

What do we mean when we say "caregiving institutions?" What we are targeting here are those institutions within our communities which are entrusted with the charge of children; for example, churches, schools, voluntary organizations, Big Brothers, Big Sisters, Boy Scouts and Girl Guides.

Children's aid societies are empowered through the Child and Family Services Act to protect children. That mandate is clearly stated in section 15 of this act. The ability to protect children is clear when children live in a family setting. For example, we can investigate reports of abuse by a parent, we can inform the other parent of a risk to the child, we can make remedial recommendations to parents to alleviate risk to the child, and if they refuse to follow the recommendations, we can apprehend the child or go to court to secure an order requiring the parents to follow the recommendations.

When it comes to situations involving institutional caregivers, the ability to protect children isn't as clear. We can investigate protection concerns related to children in their care, but under the legislation as it currently exists, we have no power to intervene to ensure that remedial steps are taken to alleviate the risk to children within caregiving institutions.

For example, the children's aid society has the power to investigate allegations that a Boy Scout or Girl Guide leader may be abusing children. We can investigate these allegations. However, if we find there is abuse, we have no way of intervening to protect the children. It is even unclear whether we are able to communicate with the heads of those organizations about our findings so they can take appropriate measures to follow up on the concerns with those leaders.

One of the most dramatic changes coming from Bill 118 would give children's aid societies the ability to move from simply investigating protection concerns in caregiving institutions to now having the ability to protect children in caregiving institutions. Bill 118 would allow us to directly communicate our findings to the

heads of caregiving institutions, so that they can make appropriate actions on CAS recommendations or findings. Bill 118 would also allow children's aid societies the opportunity, if required, to apply for a court order requiring institutions to take the necessary steps to protect children within those institutions, if necessary.

We realize that this may be seen as controversial. Some may say this goes too far in expanding the powers and obligations of a children's aid society. Perhaps a better question may be, who should have this responsibility if not children's aid societies?

Perhaps some would say that regulatory bodies of caregiving institutions may play this role. However, many groups and organizations do not have regulatory bodies governing their work, and where regulatory bodies exist, they do not have the expertise to assess risk of abuse and develop effective plans to alleviate risk of abuse. Children's aid societies have this expertise and infrastructure.

Expanding children's aid societies' power may also raise questions around liability for children's aid societies once this role is broadened. However, we must not lose sight that children's aid societies have the expertise and the infrastructure to investigate and protect children. Children's aid societies simply lack the power under the current legislation to do so, and therefore require the amendments this bill is suggesting. While the liability issue is concerning for our children's aid society, what is the alternative? To ignore abuse in institutions?

In reviewing Bill 118, we have a number of suggestions that may assist in alleviating some of the concerns that were raised in connection with this bill.

First, Bill 118 defines a list of organizations which fall under the definition of the term "caregiving institution." However, in an attempt to clearly define caregiving institutions, there is always the danger of possible exclusions, given the broad range of organizations that exist and may come into existence in the future. Therefore, a more general definition of "caregiver institutions" may better address this issue, and we propose the following wording: "A caregiver institution is an organization having charge of children, or responsible for the care being provided by a caregiver." Our definition of "caregiver" would mean every person who has charge of a child, other than a parent or other person with legal custody of the child.

Second, the jurisdiction of the court to make an order governing actions of caregiver institutions might more properly be placed in section 80 of the Child and Family Services Act rather than section 57, which predominantly focuses on placement of children. Section 80 deals with protection of children by persons other than the parent with whom the child resides.

Third, we strongly support Bill 118's changes in the duty-to-report section of section 72. Under the current legislation, a duty is imposed on individuals to report information to societies when they are suspicious of or believe that abuse has occurred. Charges can be laid under the Provincial Offences Act for failure to report.

There is a six-month liability period imposed under the Provincial Offences Act for laying charges for failure to report.

This section of the bill would clarify that the duty to report is a continuous responsibility. Therefore, if the holder of information fails to report the information for months or years, the duty continues during that period and is not limited to the six-month period following receipt of the information, as it currently is.

The changes proposed in the bill will assist in ensuring there is better reporting, given the pressures that can often occur within institutions not to report a colleague or a union member.

1030

However, for more clarity we would propose a change in the current wording of the bill in section 72. The current wording states, "The duty to report under subsection (1) continues each day until the risk to the child ends." We propose the wording be as follows: "The duty to report under subsection (1) continues each day until the report is made." This change in wording would add clarity that the duty to report continues even if a particular child leaves the institution. This is important, as other children might continue to be at risk within that institution, and therefore the reporting of information continues to be critical.

Fourth, we have heard concerns raised that the passing of the bill would create an avenue for children to make false allegations against teachers, clergy, coaches etc. The same concerns could be raised with respect to the powers the children's aid societies currently have for investigating and intervening with abuse within family settings, and in our experience this is not a common occurrence. Such concerns themselves call for a body with expertise in the investigation and assessment of abuse to separate fallacious reports from reports of actual abuse or risk of abuse. The alternative is to ignore all reports of abuse in the institutional setting, which is unacceptable. The bill also provides due process by including the court system in the analysis of and intervention in abuse.

Finally, we believe the proposed expansion of access to the child abuse register for caregiving institutions in Bill 118 requires further review, given the future uncertainty of the child abuse register and how it will function within the environment of the new fast-track system, which is a central database for children's aid societies that now is being used across the province. We recommend that the remainder of the bill proceed, rather than holding up the process for further review of this section.

I would again like to thank you for the opportunity to speak to you about Bill 118. Mr Nicholson will be providing some closing comments.

Mr Nicholson: In closing, I want to emphasize once again that our current laws do hold abusers accountable under the Criminal Code, but this is far too late for the hundreds of children who have suffered abuse in these settings. What we need are laws that prevent these

occurrences and, when abuse does happen, end it before more children are affected.

There are too many of these instances to ignore, and as we will hear from some of the other presentations, each instance exacts a heavy toll on the future of these children and their families. Under Bill 118, the province of Ontario has an opportunity to put an end to this situation. We encourage you to take advantage of it.

The Chair: Thank you, Mr Nicholson, Ms Gareau and Mr Baraniuk. We have about six minutes for questions. Mr Martin, if you would like to begin I'll give you about three.

Mr Martin: I first of all want to thank you for responding in the way you have to the report that was done by Justice Robins and working with all of us in coming forward with a piece of legislation that will go a fair distance in making sure there are some provisions in place, legislated, that will stop in some significant way the further abuse of children in institutions. Certainly you make a compelling case here. It's clear in my view, anyway, what we need to do and that we need to move on it very quickly.

Perhaps for our own edification and clarification, to become a wee bit more specific: since the children's aid society experience in the DeLuca affair, what is your experience when you move to investigate and what are these things that get in the way, more particularly and more specifically, of your doing your job?

Mr Nicholson: Jim can chip in during this too, and Nadine. One of the problems is the duty to report. At this stage, because of the confusion around the period of limitations on that, I think people feel a lot of pressure in these systems from their peers, and they have friends who work there, and sometimes they're reluctant to make a report to us. We do get people phoning two or three weeks after an event, saying, "Look, I saw this happen. I really was uncomfortable. I knew it was wrong, but I was worried about reporting it. But I just can't wait any longer." We know there are other people, when we look at the DeLuca situation, who have been in those situations and have never reported to us, even when there's been significant pressure from parents and children and a lot of reports made to them. Certainly that seems to be one obstacle, that pressure within the institution, both their worry about liabilities, I think, and their worry about what impact this is going to have on their friends and their peers.

The other major area is that when we do our investigations we're very thorough, we get a lot of information, and quite often, nine times out of 10 when we're doing these investigations, children aren't at risk. It's minor things by the caregiver that might be inappropriate but it's not abuse. But probably one out of 10 times there are things that are really concerning to us. The problem then becomes, how do we report this to the people who are managing those facilities, the CEO or their board? Because under the current legislation, when you look at section 15, it talks about providing guidance and support to parents. Section 15 defines our role but it really is

silent about us providing any sort of information and guidance to the management of these institutions. We broadly interpret section 15, which also says we have a duty to protect children, so we do provide information, but I know that across the province certainly other children's aid societies take a different position than we do. I phoned a few and asked them what type of information they report and they say as little as possible, because of the lack of clarity in the legislation. And we actually have government policies telling us we can't report to school boards, but we really feel that to protect children we have to do it.

The Chair: Thank you, Mr Nicholson. Actually, that took five minutes, so you've got about 30 seconds for the government side. Mr Maves.

Mr Maves: Thank you very much for your presentation and your continuing obvious interest in this issue. We realize that Sault Ste Marie has been especially struck by incidences of abuse in the school system. Sadly, I picked up a local paper today and read that another retired teacher is facing sex-related charges. It's a sad incident too.

I had several questions, but let me just jump to this one. As you know, in the 2000 reform of the CFSA we tried to strengthen the duty to report and strengthen the ongoing nature of the duty to report and we lessened the test for reports, all toward this area of getting better reporting and so on and so forth. When you do receive a report from a professional in a caregiving institution, as you said, you can go into a home and apprehend a child from their parent where there's abuse. Early on, was it your contention that you don't have the ability to apprehend a child in a caregiving institution, if there's evidence of abuse, once you've been informed of it under section 72?

1040

Mr Nicholson: No, we don't. When we go into an institution, the only people we can hold accountable under law are the parents. But if a child is in a young offender centre or a residential treatment centre or a school, really the abuse we're investigating isn't due to the parents; it's due to the caregiver in that setting. If we wanted to bring some action to protect children, we can only bring that action against the parents. So we can say to parents, "If you send your kids to this school, their safety is at risk and we will have to apprehend your children," or "If you send this child to this daycare centre," or something. It really isn't fair. It should be the caregivers, not the parents, who are accountable.

Mr Martin: Might I just beg the indulgence of the committee—I think it's important that this is the only time we'll have the local children's aid society before us—for us ask one further short question?

The Chair: The difficulty with that, of course, Mr Martin, is that it then delays other submissions. We have advised everyone that they have 20 minutes in which to make their presentation and for questions to be asked. Actually, the children's aid society had an additional two minutes and we're now at an additional three.

Mr Martin: We have 20 minutes before noon that hasn't been filled, in terms of the slot. I don't think the people here would mind waiting a couple of minutes.

The Chair: What is the wish of the committee?

Mr Maves: We agree to unanimous consent that he have a few more minutes if he wants to ask a question, Chair.

The Chair: OK. If you could please try to keep it brief.

Mr Martin: I'll put it quickly. The DeLuca affair was quite dramatic in this community, and shocking. Has anything changed, in your experience, with the institutions that indicates to you that because of that there is more willingness to come forward and actually report and nip these things in the bud before they go on too far?

Mr Nicholson: I think things have changed in the community. Schools are much more sensitive to the need to report, and when we do make reports to the directors of education, they are very sensitive to the information we've presented and they do seem to have a greater awareness of the impact of it. Particularly Cecile Somme and the Catholic school board in Sault Ste Marie have focused a lot of their energies on trying to become more sensitive to abuse issues and to address them. So the community has moved forward. My worry is that without something in legislation, as time passes and there's less political attention on these issues, I think we stand a good chance of going back to where we were before. I think at times children are still at risk in institutional settings in the Soo.

Mr Martin: Thank you.

Mr John Hastings (Etobicoke North): Ms Gareau could probably answer this: how should a regulator be a deliverer of services? We had instances in this province in the past and in British Columbia where CASs and similar bodies have actually been the users and abusers of the situation itself, not just sexual allegations. I'm concerned about how you would separate out your delivery service responsibility from what you're now seeking as a regulatory function when a CAS itself could be part of the problem, not the solution.

Mr Nicholson: That's a good question, because we have foster homes, we have group homes and we run some of the institutions that we're discussing in this legislation. What children's aid societies do whenever there is that type of conflict of interest, if we get a report from a child of abuse or something indicating risk, is that we contact both the local police—we have a protocol with them—and the Sudbury children's aid society for Sault Ste Marie or for Algoma, and they come in and conduct the investigations and they determine what action needs to be taken. They could institute under this legislation the same measures against us that we could institute with other institutions, and that would be fair. I think every children's aid society across the province has that sort of protocol agreement with a children's aid society from another district.

The Chair: Thank you very much, Mr Nicholson, for coming this morning and giving us your presentation.

SEXUAL ABUSE COORDINATING COMMITTEE

The Chair: The next presenters are Sharon Vanderburg, Debbie Amoroso and Karen Nixon, all members of the Sexual Abuse Coordinating Committee. Good morning. Please proceed.

Ms Sharon Vanderburg: My name is Sharon Vanderburg. I'm co-chair for the Sexual Abuse Coordinating Committee.

Ms Karen Nixon: I'm Karen Nixon, also co-chair of the Sexual Abuse Coordinating Committee.

Ms Debbie Amoroso: Debbie Amoroso, member of the Sexual Abuse Coordinating Committee.

Ms Vanderburg: The Sexual Abuse Coordinating Committee is pleased to have this opportunity to speak to Bill 118. This committee comprises several community agencies and institutions. We have been meeting regularly since 1993. Our mission is to strive to enhance the promotion and integration of a coordinated response to sexual abuse for victims, survivors, offenders, family and community needs.

Child sexual abuse is a problem of major proportions having significant implications. We believe this bill will improve CAS investigation and thereby reduce the risk to children. When a child is at risk within an organization or institution, the response for the child is compromised, for a variety of reasons. Often the organization becomes entangled with other issues, such as the potential for legal suits, staff loyalty, the reputations of staff and the institution and the reluctance to report. Let's face it: sexual abuse makes people uncomfortable and denial is still an effective defense mechanism, even for the most diligent professional. This was quite evident in the Robins review. It is our concern that the risk for children will persist as long as organizations are unable to focus solely on the needs of the children.

This bill also recognizes the evolution of the family. Today's family accesses community organizations and institutions to foster our children's development much more than our parents did. It is time to acknowledge this role of the village, not just the parent or guardian. It takes a village to raise a child; it also takes a village to protect a child.

In our minds, Bill 118 can be summed up as a blinding flash of the obvious. It's time to give the CAS the necessary authority that will enhance their mandate of protecting children. I'll proceed now with our suggested revisions.

Subsection 3(1) of the Child and Family Services Act, as amended by the Statutes of Ontario, 1999, chapter 2, section 2, and 1999, chapter 12, schedule G, section 16: we propose that this be amended to say, "‘caregiving organization’ is any group or institution having charge of children, or responsible for the care being provided by a caregiver." Our rationale is that the term "institution" is misleading. A term such as "caregiving organization" is more inclusive of a variety of caregiving situations, such as community, sports and recreational groups.

Our second one is regarding section 72 of the act, as amended by the Statutes of Ontario, 1999, chapter 2, section 22: "The duty to report under subsection (1) continues each day until the risk to all children ends." Our rationale for this revision is that we'd like to see the statement include all children at risk, as opposed to the singular child.

Thirdly, subsection 75(8) of the act: we feel it is probably best if this section is deleted. The current child abuse registry needs to be revamped to maintain a balance between the rights of the individual and the community. We are hopeful that substantial changes will be made to the registry prior to it being included in the legislation.

1050

That ends our revisions or amendments, but we have also identified a gap that we felt the standing committee may be able to address. Given that many disclosures are dated and the alleged victim is no longer a child, the CAS should have the same power to investigate, advise and provide guidance to the caregiving organization.

In summary, on behalf of the agencies represented by the Sexual Abuse Coordinating Committee, we would like to thank you for this opportunity of presenting our views and concerns. We are confident that revised legislation will enhance the protection of our children.

The Chair: Thank you very much. We'll move to questions, starting with the government.

Mr Maves: Thank you very much, ladies, for coming forward and making a presentation today. In the second paragraph—and the children's aid society before you has a similar statement in their brief—halfway down, it says, "When a child is at risk within an organization or institution, the response for the child is compromised, because the organization becomes entangled with other issues, such as potential for legal suits, staff loyalty, reputations," and so on.

The children's aid society said the same thing, "Co-workers are often reluctant to report the abuse because of friendships, loyalties, career concerns and peer pressure." I think Justice Robins, in his report, made it clear that in the DeLuca case there was almost a systemic reluctance for many years to report. So now in the new act passed in the year 2000 there's a duty to report and a liability on any professional who refuses to report.

Mr Martin asked the CAS if things had improved and the CAS response, I believe, was that awareness has improved anyway. In your view—and it has only been in place a short time, I understand, but perhaps the teachers or other professionals you may have spoken to over the past year—do you think that has made them a little more willing to actually report abuse that they may be aware of?

Ms Vanderburg: I believe that the legislation and the sensitivity has improved, but our feeling is that when denial becomes a defense mechanism it compromises the professional's judgment and ability to report. So we feel that the denial issue is still alive and well in all communities.

Mr Maves: Further, at the bottom of that second paragraph you say, "It is our concern that the risk for children will persist as long as organizations are unable to focus solely on the needs of the children." What struck me is that again in the new legislation they put in a statement that the paramount purpose of the act is to promote the best interests, protection and well-being of children. Previously, I know, the act had sections that talked about not breaking up family units or—I'm not going to get the wording right, but the least—

Mr Avrum Fenson: Intrusive.

Mr Maves: —intrusive. Thank you.

When we have the statement that the paramount purpose of the act is to promote the best interests and protection of the child, has there been a benefit from a section like that, the notion that above everything else, the family unit or otherwise, the benefit of the child should be the paramount importance?

Ms Vanderburg: I'm not really clear on your question. I don't know if the other members—

Mr Maves: I'm not a lawyer. Some of the other lawyers in the room might do a better job of asking this question, but when—

The Chair: Not necessarily so.

Mr Wood: Probably worse.

Mr Maves: Yes. When something becomes of paramount import, a lot of purpose clauses go into acts, and when people are actually implementing other sections of that act, they are protected in their scope and their reach of things they can do under the act when the purpose clause of the act helps them, aids them. In this act, the paramount purpose of the act is the protection of the child and the best interests of the child. If I were a lawyer, I would argue if I went perhaps outside of what the act might say, that that paramount importance clause would allow me to do things such as intervene in an institutional setting rather than just when the parent is deemed to be unfit.

I may be asking the wrong group, because you may not have had as much experience with intervention on children's behalf. I guess I was trying to find out if over the past year that paramount importance of the act being in the best interests of the child has had an improved effect on people's willingness to come forward and to apprehend kids. I don't know if the numbers have gone up in the community, of apprehensions of kids or whatnot.

Ms Vanderburg: Do you want to respond to that?

Ms Nixon: As far as I know, they have gone up. That might have been a question that the CAS might have been able to answer, but at a recent training session we were at, they had indicated that they had gone up.

Mr Maves: OK.

Ms Vanderburg: I guess it wouldn't hurt to reiterate that the denial issue would also play a huge part.

Mr Maves: There's a \$1,000 fine right now for someone who is held liable for not reporting. Do you think that's enough?

Ms Vanderburg: I guess I can't reiterate enough that if a person is in denial, they will not proceed with any other thoughts, because the denial supersedes—

Mr Maves: Regardless of the penalty.

Ms Vanderburg: That's right.

Ms Amoroso: The whole legislation and the whole denial issue—if someone can sit there and convince themselves that what they're seeing is not actually an incident of abuse, then they don't believe that that \$1,000 fine applies to them, so again you're back to the systemic issues. The legislation has been in place for a year, but the reality is that it takes a lot longer to change. The problem didn't get created in a year, and it's not going to get resolved in a year. But I think it's a start; it's moving in the right direction.

Mr Martin: Thanks for obviously doing a lot of good work around this piece of legislation here. Your amendments are consistent with the amendments brought forward by the children's aid society, and I'm sure the committee will be looking at those as we move forward. The recommendation by the children's aid society that we set aside the child abuse registry piece for perhaps another day is simply to get the more important heart of this in place.

There was an issue, though, raised by the CAS that you didn't touch on in your presentation that I just want you to perhaps comment on. This is the idea that if we make it too easy, actually children will make false allegations against teachers, clergy, coaches etc. What would your response to that criticism or fear be, that obviously it wouldn't be mentioned if it wasn't on the table?

Ms Vanderburg: My thoughts on that are that there is always that fear that there will be false allegations, especially from federations and unions and protection of their employers. My experience from reading the literature and working with professionals in the arena of sexual abuse is that the incidence of false allegations is much less than the public's perception.

1100

Ms Amoroso: I think it can be weeded out, but certainly I respect what children's aid has said in bringing this forward. We need to be careful how we guard this issue so that it also isn't so tough that people don't come forward and things stay hidden. There needs to be a balance struck so that the rights of the child are protected and the rights of the caregiver. It's a difficult balance to create, but I would much rather see things come forward and be able to be weeded out than have it so stringent that things can't come forward at all.

The Chair: We have a couple more minutes.

Mr Martin: In your view, what happened in the DeLuca case? How did it continue for so long and why wasn't it reported?

Ms Amoroso: In my view, much of it was the systemic issues, the things that Sharon spoke about earlier: the protection, the loyalties, those kinds of things. It was shuffled, and it was swept under the carpet for a number of years. I think much has to do with education also. People didn't know how to handle this. This is a

very, very uncomfortable topic for people. People didn't know what to do with the information, so they didn't do anything with it.

Mr Martin: Do you believe that if the children's aid society had had the power back then or if they were given the power by way of the passing of this act, they will then know what to do with it? Will it be easier for them to report?

Ms Amoroso: I think the education and the guidance that is getting out there will create the atmosphere to report.

Ms Nixon: And giving the children's aid society the backing that they need to go ahead and do that, I think, will be a benefit.

The Chair: Thank you very much for coming in this morning.

MARY

The Chair: The next presenter is Mary. Good morning, Mary.

Mary: Good morning.

The Chair: Please proceed.

Mary: In order to protect the anonymity of this family, I have been asked to read this letter on their behalf:

"As the mother of one of Ken DeLuca's many victims, I feel compelled to write this letter. I have kept silent from speaking out publicly for many reasons. One very important one is that neither my daughter nor our family wanted it known who we were and also, as in the past, it made no sense to come forward on our own. Things are now different though.

"I applaud the Sault Star for publishing the Robins report. As I read it I find myself shaking with fear, anger, disgust and sickness. The same feelings I had when my daughter first informed me that a teacher was sexually assaulting her in the separate school system and in the school that she was attending. The same feeling I had when I realized that no one at the separate school board was listening to my cry for help when we informed them of what was going on. The same feelings I have when I think about the fact that all of these men Bill Struk, Harvey Barsanti, Gary Barone, Raymond Mask etc are sitting in their comfortable homes collecting a big pension cheque knowing full well that they sat back and did nothing to stop this pedophile from sexually abusing minors.

"As parents themselves, I wonder how they would have dealt with the fact that every night before they closed their eyes they would say a silent prayer that their daughter would be safe in school tomorrow and that she would be able to stay out of sight of the stalker and pedophile who was being allowed to roam freely among the children because his superiors refused to deal with him and his behaviours.

"As parents we sent our beautiful little girl into a system that we thought was being overseen by good, up-standing, Christian people. Little did we realize how very

wrong we were. I wonder once again how these very people would have felt if they had to deal with the fact that 16 years before their daughter was born, a pedophile was already beginning to stalk and abuse little girls and was getting away with it because he was being protected by his supervisors who were good, upstanding, Christian people.

"I have heard it said that one must walk in someone's shoes to know and understand. Well, Mr Struk, Mr Cameletti, Mr Barsanti, Mr Mask etc, I challenge you to try to walk in my shoes and go where I have gone: countless nights of being awakened by your little girl's screams and trying to convince her it was only a bad dream and that this man couldn't hurt her any more; countless nights of being awakened by your own grown daughter's screams, only to go to remind her once again that it was only a bad dream and that this man couldn't hurt her any more; trying to explain to her why this man was allowed to do what he did and, most important, trying to teach her to trust again.

"The Robins report being published in the Sault Star was a good thing, because for the first time all these men could see in writing what they as a group did to innocent little girls and their families. Once again, as all of you men sit in your comfortable homes, I hope you will see the devastation that is caused by your refusal to see what was going on and how your lack of involvement allowed a pedophile to run loose, and how he ripped through the hearts and souls of so many children and their families. May God help you all when you face your higher power and try to explain to Him why you allowed this terrible thing to happen to so many innocent children.

"As parents who have experienced the shortcomings of the existing legislation first-hand, we believe Bill 118 is a step in the right direction. The amendments contained within this bill, had they been in place, would have minimized the number of victims and the length of Ken DeLuca's tenure within our educational system. We also believe those persons responsible for the care and safety of our children within the educational system would not have committed acts of omission had they been held legally accountable.

"With this bill there will be no more reluctance on the part of the person who has a duty to report suspected abuse. No longer will those persons have the ability to transfer the problematic co-worker or friend into another unsuspecting school or institution so that the abuser has total reign over a new selection of victims.

"As parents, we have a legal responsibility to provide shelter, health care and education to our children. I feel that when we have a responsibility to enrol children in these institutions, they in turn have a legal responsibility to us and to society as a whole to ensure the care and safety of our children while they are within their confines."

Thank you, "from the mother and father of one of Ken Deluca's victims."

The Chair: Thank you, Mary.

Mr Martin: do you have any questions?

Mr Martin: I don't have any questions.

The Chair: Government members?

Mr Maves: Sure, I'll ask a few.

Thank you, Mary, for coming forward and making this presentation on behalf of this family. As the father of a four-year-old daughter, who is just now in school, and a two-and-a-half-year-old son, when I read Robins' review it strikes a bit of fear in my heart. You obviously can't protect your kids their whole lives. You'd like to keep them at home and play with them and feel you can protect them from everything, but as they get older they do go to school and go out and play sports. You have to let your kids do that, because they have to live normal lives and you can't let the terror of certain monsters we've come to know in our society, unfortunately, steal your child's life. You can't protect them from everything.

When I read that report, even though I'm not from Sault Ste Marie and haven't really lived it the way people in Sault Ste Marie have, nor lived the fallout, nor lived what the folks here in Sault Ste Marie have lived as they've picked up their paper and read the report, and read about it for many years, I do feel the fear that report and the instances it reported on brought to the hearts of the people in the community.

I just wonder, for my own interest, if, throughout this ordeal in the last few years, there has ever been any kind of response from any of those—and I won't name any persons' names—who have really turned their eyes from the whole process or who some of the parents feel are culpable in the whole process?

Mary: I don't believe so.

1110

Mr Maves: You know we still have in the school system—actually, the parents in here noted that we tend to transfer the problems. I know; my wife is a teacher. We tend to do the same thing with teachers who perhaps are not performing up to par as teachers—forget about the sexual abuse or misconduct side—and transfer them to another institution until the parents there get frustrated because their kids can't learn from that person and they get transferred again. I wonder if you have any advice for us. There are 100,000-plus teachers in Ontario, and I don't intend to pick on them or anything today. But maybe that denial the ladies talked about before, not just about sexual abuse but about a colleague who can't do their job—has there been any discussion in the community about how we as a community can handle that type of buck-passing, that type of turning our backs on these types of things?

Mary: I think that now with the amendments, with the duty to report, more teachers are going to feel compelled, even if it's something they're not sure of but have a suspicion. Perhaps with the changes in this bill, that's going to make teachers say, "Look, I don't know for sure," but at least it'll be investigated. Then if it's in a report on the teacher and they're being transferred, the other institutions are going to be aware. Right now I don't believe they are.

Mr Maves: I wonder, though. The ladies before you said that even with the new responsibilities—the onus to report, the ongoing duty to report, the penalties for not reporting—in a case where there's denial they just won't report. Is there some broader education we can undertake in order to get people over that hump?

Mary: I believe the educational system is starting to do extensive training with the teachers and that sort of thing. Actually, I've heard some teachers say it's putting fear into them as far as giving a hug to a student or that sort of thing. They've certainly become more aware—

Mr Maves: The other side of the coin?

Mary: Yes.

Mr Hastings: Mary, thank you for coming today.

You know this family. Do you know to any extent, aside from criminal penalties, whether this family and any other families may have gotten together—although given the sensitivity of the issue, probably not—whether they have actually contemplated an individual civil suit or a class action suit?

Mary: I don't know.

Mr Hastings: I'm not a lawyer, but that's certainly something I would think ought to be looked at. I've had similar situations in another context and have suggested that. A lawyer friend of mine did take up a case, not on sexual allegations or abuse or conviction, and they won. It's not much relief, but it is another way to get some kind of limited justice on something that's now past. I encourage, if you talk to these folks, that they look at that route.

Mr Maves: Just for clarity, Chair, my recollection is that there was a civil suit by some of the families involved and it was actually settled out of court. I don't know if this family was involved in it, but I know that some did that. As Mr Hastings says, if this family wasn't involved in that, there may be an opportunity.

The Chair: Thank you very much for coming in, Mary.

ANNE O'CONNOR

The Chair: The next presenter is Anne O'Connor. Good morning, Ms O'Connor.

Ms Anne O'Connor: I'd like to welcome you to Sault Ste Marie and thank you for coming. I don't think I'll be as clear and make as much sense as the two previous presenters and I'm not sure I'll say anything that will be useful in moving you forward in this legislation. I really just came because I wanted the opportunity to tell you a story.

I'm a social worker in a private practice, and as a social worker in private practice I have a little bit more freedom than my colleagues who work in institutions. I was a former children's aid worker some years ago.

When Gladys Pardu, the judge, declared in her sentencing that Ken DeLuca was a predator, that hit me like a baseball bat in the head. I saw, maybe for the first time, that each of us in Sault Ste Marie held a piece of the puzzle, and, because we had never talked, we never put

the puzzle together. We never put it together that this was going on under our noses.

I want to address the question that someone asked earlier about being part of the problem versus being part of the solution. It's my opinion at this point—I'm going to go beyond what Ms Vanderburg said—that Sault Ste Marie is a poisoned environment. It definitely was a poisoned environment during the course of this abuse that went on for 20 years, and the investigation. I even believe post-DeLuca that Sault Ste Marie is a poisoned environment. So I'm addressing the context in which this is taking place.

When I first heard the word "predator," I thought of the situation as being like a plane crash, and being a bleeding-heart social worker, the obvious response on my part would be, "It's like a plane crash; we all have to get together and start talking." If you had a plane crash, you would go to the site of the plane crash, you would help the survivors and immediately you would begin looking at how this happened and what you were going to do to prevent it. In my experience, there is great resistance to talking about how it happened and how we're going to prevent it, and to my mind we are still in that place. We're still not talking about how it happened and how to prevent it.

I was rather outraged during this time and some of my friends might say I was slightly insane. I headed out to have a number of conversations with people. I just took it upon myself: "I'm going to go and talk to some of these people to find out why there is resistance to public inquiry."

Tony Martin was one of the people on my list who I spoke to and I would have to say that Tony and I went nose to nose, head to head, because at that point Tony was also saying, "Anne, we have to put this behind us." Tony has moved very clearly, very strongly off "put it behind us" and has shown a great deal of courage and provided a great deal of leadership. He has shown integrity, he has taken a firm and clear stand about some of the things that needed to happen here, and I really thank Tony for that. I know it was personally and professionally a very big struggle for him, as it was for all of us, to try and deal with this head to head.

One of the things I did along the way was, I thought, "I've got something to say about this situation and it's not being said publicly, it's not being said in the newspaper and it's not being said, as far as I know, except around kitchen tables and in parking lots." I started to write a newsletter, and I just sent my newsletter saying what I had to say and what other people had to say. I sent it off in many directions, but I particularly sent it to the separate school board, only to find out some months later that my newsletter was never delivered to the board members. It was stopped by the director of education and never delivered to the board members.

In speaking to a member of our elected board of trustees, I was told they knew nothing more than the public did about what had gone on in the DeLuca situation. They'd had a meeting with lawyers and the

insurance companies and were told they could not talk about the situation and they would not be given any other information about the situation.

I met with the director of education. I innocently made an appointment and went to see him and said, "Let's talk about how this happened and how we're going to prevent this." He said to me, "Our lawyers and our insurance companies advise us that we cannot discuss this, and I'm not going to discuss it with you."

1120

I had a meeting with the police chief. I had some really serious concerns about the involvement of the police in this situation. You may or may not be aware that it was alleged that three policemen were aware of what had taken place, that they had been told what was taking place. Apparently some investigation had taken place and the police chief went on television and said that he believed no wrongdoing had taken place and that we needed to trust him, that he was going to protect children. So I had a meeting with the police chief and I said to him in no uncertain terms, "I am not confident that the city police will protect children, given that the real information about these three policemen was never brought to the forefront."

Our mayor at that time was a former teacher and principal for the separate school board and a former member of Parliament, a man who, to this day, I have a great deal of respect for. He publicly took the position, "Let's put this behind us." I went to the mayor and said to him, "It's not acceptable for you to say publicly, 'Put this behind us,' because these young women will never put this behind them. We have to have the courage to stand up and say, 'Let's deal with this. Let's do something about this.'"

At that time there were two council members who were also implicated in this case. One was a former director of education, Mr Cameletti, and another one was a brother of the offender. So picture this, folks: the city council, the mayor and two councillors are directly related to the separate school board.

I had a public meeting on television with one of our child-serving agencies. At that time, in this public meeting, I said to this person, "How come your agency isn't moving forward and leading a response to the situation?" Remember, what I was looking for was a public inquiry: how did this happen and what are we going to do about it? He said, "It is not our responsibility to step into the domain of another organization." What he's saying is, "If the people in that castle are beating each other up, we're not going to go over there and check out what's going on in that castle." Only, the people who were being hurt were children. That particular agency had a long-standing contract to provide services to the separate school board.

People would call me up and tell me things. I became aware that there was a letter on the bulletin board in every teachers' room in the separate school board that said, "You will not speak about this case, and if you speak about this case, you will not be protected." So I asked for a meeting with the head of the teachers' union. The president of the teachers' union met with me and

said, "Yes, I know about that letter. I wrote it." Picture this: over 20 years, there were many teachers, as well as students, who knew rumours, heard gossip, knew that something was going on in the community. I said, "Why would you do that? Why would you silence your colleagues?" He said, "Well, we can't protect them if they speak up and they're sued for libel." After an hour of head-butting with this man—and I'm happy to say he did buy my lunch—he stood up and said, "I have to go now, Anne. Keep doing what you're doing. It's vitally important to my children"—to his own children.

I wrote letters to 22 child-serving agencies. My letter was just inviting them to have a conversation, to take it away from the parking lots and the kitchen tables and move it into the boardrooms and let's talk about what is happening here. How did this happen? What are we going to do? What part do we play in this?

I only heard back from three child-serving agencies. The president of one of the child-serving agencies called me from that person's workplace and said, "Our board did discuss your letter and we decided that we were going to take individual action. We are not going to take group action." I said, "Oh, that's interesting. What kind of individual action are you going to take?" "I can't discuss it." "What do you mean you can't discuss it?" "Well, I'm at work right now, Anne, and I can't talk about it." I said, "What do you mean you're at work right now? We're talking about child abuse." "Yes, but I can't talk about it." This person worked at the separate school board. This is long past the DeLuca conviction and the person is still saying, "I can't talk about it. People around here are sensitive."

The Chair: You have about one more minute.

Ms O'Connor: A parent on a parent council stood up at a public meeting and said to me that the parents at the parent councils were told they could not discuss this case. So they could not ask, "How did this happen and what are we going to do about it?"

I only have one more minute.

The point is that this is an example of a poisoned environment consisting of 80,000 people. These professionals that I'm talking to you about are highly trained and ordinarily professional people who at any time I would trust to carry out their duties. I have respect for all of these people. But in this situation they did not act with courage or integrity, for whatever reason: because they're afraid for their jobs or because of privilege or a fear of the relationships they had with people. In your act, it talks about informing and supporting and giving guidance. These people did not act to inform, support and give guidance to this community, and this is our leadership. This is our agency leadership and our political leadership.

I just want to leave you with a question: who is going to speak for the children? Who's going to say, "I know what you're doing and I'm going to stop you; I'm going to take steps to stop you"?

The Chair: Thank you, Ms O'Connor. We're a little overtime, but I will allow one question from Mr Martin and one government member.

Mr Martin: Thank you, Anne, for all of your work and for coming here today. I have to tell you that when I contemplated bringing this legislation forward, and then the possibility of having a hearing in Sault Ste Marie about it, I thought we would be inundated with people who wanted to come and talk about it. Sadly, we hardly have enough to fill half a day. We could have plugged in probably another 10 people here today to talk about this, and they're not here. Why aren't they here?

Ms O'Connor: Tony, I still believe we have a poisoned environment. I think it goes beyond morale. I think there is a cone of silence, which is kind of a Trekkie term, but I believe there is a cone of silence.

Mr Maves: Because of the time, I'm only going to say, in reading some of the excerpts from the DeLuca case, Justice Robins's report says, "The school board repeatedly failed to appropriately receive and act upon complaints." Another section says, "Officials or employees may have suspected DeLuca's abuse and refrained from making further inquiries out of loyalty for a colleague or concern for the reputation of the school system." Lord knows where that reputation is today.

But this is something that scares me—a report in the local paper today about a former teacher being charged scares me. Robins says: "It must be concluded that the DeLuca case is neither aberrant nor out of date. Teachers' sexual misconduct is sufficiently prevalent to warrant special attention." I think you'd agree wholeheartedly with that statement. I'm concerned, as you may have heard before, about my own kids and other boards and other communities. How is it that we get people to take their heads out of the sand and realize that the protection of that child should be the paramount consideration in their minds?

Ms O'Connor: To me there were three significant things that happened that helped in Sault Ste Marie. One was the publication of an investigative report in the *Globe and Mail*; the second was the TV program on *The Fifth Estate*; and the third was the Robins report. But my feeling is that unless there's an outside intervention into this community, that poisoned environment will continue.

Mr Maves: The more public disclosure, the better?

Ms O'Connor: The thing our mayor was really concerned about was how we would look to the rest of the province, right? I'm saying if it comes to the best interests of the children, there needs to be intervention from outside Sault Ste Marie into Sault Ste Marie when we have one of these multi-victim situations.

The Chair: Thank you very much, Ms O'Connor.

I had a request for a two-minute recess, so we'll be back at about 11:31.

The committee recessed from 1130 to 1142.

SEXUAL ASSAULT CARE CENTRE ALGOMA COMMUNITY LEGAL CLINIC

The Chair: We'll call the meeting back to order, if committee members could please come back to their seats.

The next presenters are Bryna Coppel-Park, coordinator, and Dr Gayle Broad of the Sexual Assault Care Centre of the Sault Area Hospitals. You have 20 minutes.

Ms Bryna Coppel-Park: Thank you. Before I begin, I would just like to clarify that I am the coordinator at the Sexual Assault Care Centre and Dr Broad works at the Algoma Community Legal Clinic, but we have chosen to present together. I'd like to welcome the committee to Sault Ste Marie and I thank you very much for this opportunity to present to you.

The Sexual Assault Care Centre, a department of the Sault Area Hospitals, has provided both medical and counselling care to women, men, adolescents and children, survivors of sexual assault and sexual abuse since 1990. I might add that includes those who are survivors of sexual abuse in the past. We serve approximately 250 people on an annual basis.

The Algoma Community Legal Clinic has provided services to low-income people throughout the district of Algoma since 1984. On an annual basis they serve approximately 150 survivors of sexual assault and/or abuse in the context of criminal injuries compensation and they provide advice to many more.

Together the Sexual Assault Care Centre and the Algoma Community Legal Clinic, in conjunction with other local agencies, have developed materials for the general public providing guidelines for the reporting and aftermath of sexual assault and abuse, and have developed a television series that has been aired across the province. We regularly provide community leadership around this issue.

Today's presenters have over 20 years' experience each of working with victims of child sexual abuse and both have been active in lobbying for progressive changes to the legislation affecting survivors.

In the early 1990s, as you know, a case in Sault Ste Marie illustrated the need for further changes to the Child and Family Services Act. A local teacher was charged and later convicted of multiple acts of sexual assault perpetrated against children entrusted to his care within the school environment. While this particular case received national media attention, we are well aware that this was not an isolated incident. Rather, locally and nationally there are many examples of abuse which occur in an institutional or organizational setting. Other examples include the Mount Cashel tragedy and the Maple Leaf Gardens assaults. There are many other examples less well known but which also inform our recommendations today, including a sports coach, a school bus driver, chaperones for travelling sports teams, members of the clergy and volunteer organizations. In short, wherever adults are in a position of trust and authority over children, such examples of abuse of that trust have been found.

Our experience has taught us that the lives of children who have been victimized in the context of institutional authority have been profoundly disrupted by the inability of society to provide adequate protection. Although those

who have recovered from such abuse should serve as heroes to us all, all too often their voices are not heard. We would ask the committee to consider how many victims have been able to appear before them in their consideration of these proposed amendments.

As service providers, we cannot speak with the voice of survivors. We have chosen today to make our comments in the context of the following questions: would this proposed amendment have protected one child from abuse? Will it prevent one child in the future from suffering the pain of being a victim?

Dr Gayle Broad: I'm going to now lead the committee through the recommendations. I would like to introduce this by just saying there are a couple of general comments we wish to make for the committee's consideration in terms of reviewing the amendments that are being proposed, as well as other amendments which you may wish to consider. I think the previous presentations this morning have spoken to some of the issues we wish to raise in our general comments.

First of all, with regard to making a complaint: in our experience, individuals who come forward to make complaints against suspected perpetrators, and who of course are now obligated to do so under earlier amendments to the act, do not have sufficient protections. We believe that responsible actions should in fact be rewarded but, instead, in at least two local cases, we're quite aware that these actions have resulted in severe penalties for the people who brought forward the complaints. As we heard from previous presenters, people fear, and quite justifiably, for the kinds of sanctions that others who do not believe the allegations will bring against them, including loss of employment or suspension from employment, which may later in fact result in reinstatement. However, during the time of crisis it certainly causes incredible emotional damage, as well as financial damage, to the people bringing forward the complaint. We believe this issue should be addressed by providing penalties to employers and organizations who may try to dismiss, suspend or terminate, whether it's a voluntary position or a full-time paid position, as a result of a complaint being made.

We also believe, second, that there needs to be a communication protocol in place in cases like this. Anne O'Connor previously spoke to the issue of this sort of cone of silence that descends upon organizations, frequently due to legal advice they've received from either lawyers or insurance companies. In cases of institutional or organizational abuse, a large number of people are affected—not only the direct victims of the assault but the co-workers, the volunteers, the members of the boards responsible for the overall functioning of the organization. For many of these people, fear of liability, reprisal from the perpetrator, particularly in smaller communities, or their own culpability in it, struggling with the fact that they may have heard rumours 10 years ago and didn't act upon them and so on, may cause further trauma to the victim, to the family members, as well as to the complainant.

1150

We therefore recommend that a communication protocol be established so that all members of the organization are provided with the information they require to address their own emotional and psychological needs. Again, to refer to one of the previous speakers, in the case of something like a plane crash or the death of a child or a bad accident happening at a school ground, counsellors and crisis workers are brought in regularly and a team is provided. That certainly is not the case in organizations, particularly if you are talking about a smaller organization which perhaps does not have the financial resources itself to bring in such a team. We would recommend that that be given consideration.

With regard to the specific amendments that are before the committee and are currently being considered, we have a number. We support comments that have already been made regarding the proposed definition of both "caregiver" and "care-giving institution." In our view, the definitions provided in the amendments are too narrow and they should be expanded to include members of the boards of directors, members of the clergy, volunteers and paid staff of religious organizations, clubs, associations or institutions.

Our rationale for this amendment is that children are exposed to but are frequently unaware of any adult's specific, particular role within an organization. They just view this as a person in authority and may be victimized by that person. A member of the board of directors of a non-profit organization, for example, or a parent-run children's activity could be the perpetrator and should be subject to the same kinds of investigation as any other member of the organization. Voluntary roles within organizations also need to be supervised, and the organization itself is certainly affected by those volunteers who participate in it and who may perpetrate such a crime.

The suggestion to amend subsection 15(3) by (c.1) is strongly encouraged. Our rationale for this—this is the subsection that deals with the children's aid society having the authority to provide guidance and support and so on for the protection of children—is that no organization can justify their internal policies and procedures having precedence over the law. It's our view that by instituting that amendment, organizations can no longer say to employees that their first responsibility is to the organization; that in fact then the first responsibility is to the protection of the children who are in their care. So we would strongly encourage that amendment to be enacted.

Third, we have to speak to a caution that we would encourage the committee to consider carefully, the proposed amendments to subsection 75(8), due to our concerns that the opportunity to pursue criminal charges may be compromised by the proposed amendment as it currently stands. Although we are very supportive of the need for an outside organization to have the authority to seize records that may pertain to the incidents, we are also quite concerned that the search and seizure of those records and the removal of documentation may jeopardize a complaint of sexual assault that would lead to a

criminal conviction. Many of the members here are quite possibly more familiar with the Criminal Code and the protections that are in place there for the defenders of perpetrators of such crimes and that broad powers to remove documentation from files may result in putting more children at risk by allowing a perpetrator to go unpunished for their crime due to inadmissibility of evidence in the criminal trial.

We would suggest that, as an alternative, consideration be given to establishing a special investigation team in each community that would be composed of both children's aid society workers and police officers. We would suggest that such a committee be staffed by senior personnel with a great deal of experience in the investigation of sexual assault cases. In smaller communities, of course, this may require—and I think again we would support the position of the children's aid society—that these not only be specially trained individuals but be from outside of the community. It would prevent conflict-of-interest situations in smaller communities where the perpetrator or family members of the abuser are known to either the child welfare worker or the investigating officer.

It's our position that the police and children's aid need to be working very closely. Certainly locally there has been an improved and closer working relationship that we have been able to observe between the police and children's aid in recent years. But that certainly is not true in every community across the province, and we encourage this committee to consider taking action to ensure that kind of close working relationship is there.

In conclusion, we trust the information we've presented today will be carefully considered by you, and we urge you to make amendments with consideration and care for the victims of sexual assault and abuse. For far too long, organizations and institutions have placed the interests of the organization itself before the welfare of the child it was established to serve. We urge that the committee's members today place the child's interests first.

The Chair: Thank you very much. We have about four, maybe five, minutes for questions. Mr Martin.

Mr Martin: Thank you for coming forward and for the obvious work you've done in looking at the proposed amendment and your recommendations. We certainly will look at them and see what we can do together to improve this piece of legislation.

I'm going to ask you a question I've asked others this morning, because I think we're getting a bit of a mixed message. You deal with the abused on a regular basis, and so you know what's going on to some degree—those who do actually come forward. Have circumstances or conditions improved in this community since the very dramatic and shocking revelation of the DeLuca affair?

Ms Coppel-Park: It's been a number of years, and I think the men, women and children we see are able to tell us that, yes, in some ways things have improved, but not all the time. Obviously—or there wouldn't be the need for this amendment—we don't always know the result of

our reporting to the children's aid. We're not privy to that information, and sometimes the heads of organizations are never privy to that. So it's sometimes really hard to judge that. I think we have noticed improvements in some ways, but it's not enough to feel satisfied and secure that all children are being protected.

Mr Martin: Do you have any thoughts on perhaps why some of the folks who were directly involved and still have responsibility are not here today talking to us about this amendment?

Ms Coppel-Park: I can't answer that. All I can tell you is that I made personal phone calls to a number of people, letting them know about the hearings and suggesting they might want to attend. I can't speak for them.

Mr Martin: I think one of the recommendations you make here warrants some attention. It goes back to a very good question Mr Hastings asked earlier, and that's the question of conflict of interest. I think the children's aid society was very forthcoming and honest in its response; they have sort of dual roles. In smaller communities where, as you indicate here, there is a lot interaction between people and interrelationship between people, how do we make sure the job gets done? You have recommended the police and the children's aid society coming together; you've recommended maybe outside. Do you want to expand a bit more on your concern on that issue?

1200

Dr Broad: We provide service across the district of Algoma, so we provide service to many small communities. Sault Ste Marie may be considered small by some standards, but we're talking about communities of 500 people and smaller rural areas where the community might be 35 or 40 families. In those situations, it is still extremely difficult for people to come forward. Everyone in the community knows about it. They tend to know their local OPP officer; they tend to know their local children's aid worker. The children's aid worker may be a neighbour, may be a friend. For example, people may have seen the local children's aid worker speaking to the perpetrator in a grocery store or in the post office and assumed they are somehow friendly or friends, and therefore it wasn't safe to report to them. Having someone from outside the community having responsibility and having, as well, a team that is specially trained, that knows these issues, that knows the crucial importance of dealing with it in a community-wide way—because I think it has an impact on the entire community.

I would like to give you some personal examples or some examples from my own caseload, but I can't do that and still protect the confidentiality of the clients. But there are circumstances in rural areas where jokes are made about a perpetrator. Everyone knows that a particular perpetrator has a reputation for having underage drinking parties with young boys or young girls or whatever. When I say "everyone," I don't mean that it's widespread knowledge; it's a hint. There's a suspicion; there may not be any proof available. Those kinds of

things happen in a small community, and it is terrifying to come forward and report. Even though there is now an obligation, the people who tend to know about that obligation tend to be professionals who are not necessarily living in the rural community or are not necessarily exposed to the comments, the jokes, the sort of underlying knowledge that isn't really knowledge that's out there.

Mr Maves: Thank you very much for your presentation. I want to point out that in the Legislature, Mr Martin and I spent a few moments alone a couple of times talking about the bill. In the Legislature the bill received all-party support. However, as you may know, we reworked the Child and Family Services Act in 1999, and a lot of time and effort was put into doing that.

When people draft legislation, they have to be very careful with everything they draft. One of the concerns I talked about to Mr Martin was that in the bill, when you start actually naming professions, teachers or child care workers as caregivers, you run the risk, when you put that in legislation, of not getting everybody. You've made this point very clearly. I know that when drafters do draft legislation, they usually try to come up with a very broad definition so they'll be able to encompass all the people you've talked about, the people Mr Martin has listed in his bill and any other potential perpetrators. I think you have very wisely pointed out that you have to be very careful when you're doing that in a bill, and I thank you for that suggestion and for some of the people you've added.

Similarly, on section 3, another problem I've come to learn in my five and half years as an MPP is that when you draft legislation, as careful as you are and as many lawyers are involved in the drafting and public hearings and the number of people who come in to talk about it, sometimes as much as a word or one clause can have an unintended consequence. You again point that out in your concern about subsection 75(8). I want to thank you for that. That's the reason we're here, I think, and to have hearings so that we can hear from folks.

I'm going to finish off with a question. The sentence right at the bottom of your presentation reads, "For far too long, organizations and institutions have placed the interests of the organization itself before the welfare of the child it was established to serve." I think that strikes home with a lot of people, that we as a society introduce all kinds of institutions and organizations with the sole purpose of looking after kids or providing a service to kids, and too often, once you've been in the institution or the organization for a long time, you kind of get blinkers on and forget that and the adults in the system tend to look after the adults in the system.

I don't know how to turn that into a question. It's quite a statement that you made, and you've picked up on something. Have you any advice for us when we go forward? I know we're doing some training programs in community and social services with the education system on sexual abuse in the system. Is there any advice that you have for us in our governmental organizations on

how we can educate people within the organizations, within the province, to keep paramount what the organization is for? It's a broad question, I know, but it's a huge problem for us. I don't know if it's just a matter of education.

Dr Broad: I guess we both want to answer. It seems to me that one of the questions that all too often we lose sight of—I work for an organization too. Whenever a new policy is introduced, I think we should be asking ourselves, the template for evaluating any particular policy should be, "How does this improve our service to our clients?" If you're a child-serving agency, then it's, "How does this improve the quality of service that we deliver to the children?"

Ms Coppel-Park: I think education needs to be broadened out. We've appreciated the efforts that the local children's aid society has made in providing education to other professionals around the changes to the act, April 1, 2000.

It's very time-consuming for them to do it, and I know that, as important as it is to reach professionals, it's also important that the community at large understands its responsibility to report as well, and whenever there are any changes, that education be looked at in a multi-faceted way.

This is not easy information for any of us to deal with, and for the general public, who very often are the ones who know or sense that children are at risk or that children are being abused, I think it is still unclear as to what their obligations are. Having education at many different levels would be really helpful.

The Chair: Thank you very much, Ms Coppel-Park and Dr Broad, for coming in this morning.

We will recess for lunch, and we'll return here at approximately 1:20.

The committee recessed from 1209 to 1335.

The Chair: I'd like to call the meeting to order. Could I ask committee members to please take your seats so that we can get started. I apologize, ladies and gentlemen, for our being a little late. Some of us got tied up at your local college.

ALGOMA HEALTH UNIT

The Chair: The next presenter is the Algoma Health Unit, Dr Allan Northan, medical officer of health. You may proceed.

Dr Allan Northan: I wasn't here this morning, so if there are any rules to this, I don't know them. Just remind me if I do something that's inappropriate.

The Chair: You have, Dr Northan, up to 20 minutes to make your presentation. If there is time at the end of the presentation, there may be questions entertained by members of the committee.

Dr Northan: Thank you very much. My presentation will likely be short. If there are any questions, I'd certainly be happy to try to answer them.

Basically, the purpose of being here, from my point of view, is that society should ensure comprehensive

protection of vulnerable children and youth from abuse. I think we all buy into that. For vulnerable, just to let you know where I'm coming from, I relate that to an imbalance of factors such as age, experience, position and authority. What I thought I would do, and I'm keeping it pretty brief, is look at the stakeholders involved in this issue. Obviously children and youth are the ones we're concerned about here. The outside stakeholders that influence children and youth are the children's aid society in the instance of the legislation that we're looking at here, and they have a very distinct role in making sure that children and youth are protected. Then there are the caregivers in the institutional settings, who definitely have a day-to-day role in protecting the children they're working with.

First for the children's aid society: the children's aid society should have no barriers to reasonably and sensitively pursue and deal with a concern of abuse of children or youth in any setting, home or institution. I believe, from working with the children's aid society, that they have the best interests of children and youth at heart, and I have full confidence that when they get involved in an issue it's solely to protect the vulnerable side of these people in our society.

The second part is the caregivers. I'm not really even sure how much this ties to the child and family services legislation that you're looking at, but it's certainly part of the justice and social policy part of the role this committee serves. Caregivers who witness abuse should come forward to protect young victims from any further abuse. The witness is a critical element in that the CAS can only act on abuse if they are aware of a concern. I know the act goes into what the CAS should be able to do when they learn about potential abuse, and I fully back the efforts that the CAS is making in terms of being appropriately involved. But unless somebody notifies them or tells them, things can go on and on.

Two areas of concern in terms of the caregiver-witness are as follows: one thing that I think is important in our society throughout the province of Ontario is the whole element of prevention. I think all institutional settings should be required to hold annual sessions, for choice of a timeline, which review the issue of abuse, its effect on children and youth and the ethical and legal responsibility of those in charge to provide a safe environment. I think that's the awareness of people who take care of children about their role and the potential effects on children.

Fire drills are held on a regular basis to remind people about fires and how to deal with them if they should occur. Likewise, legal requirements to regularly address values and duties could prevent abusive situations from arising. If situations do arise, they are more likely to be stopped quickly. To me, that's the whole thing of prevention: the sooner you can stop something, the better.

The last one is condition of employment. I think most people would agree that anybody who has responsibility for children should have their best interests at heart; if

they don't, that would make me wonder why they are employed in that role. As theft is considered a reason for job dismissal, flagrant inaction to come forward to protect children and youth from abuse should clearly be a cause for dismissal from a job. Peer pressure or other issues which might bias people from coming forward to expose a fellow worker who is abusing children and youth would be offset by the importance of holding a job. I guess that's just another lever on top of everybody's ethical state to protect the rights of children.

That's my submission. If there are any questions, I'd be most happy to address them.

The Chair: Thank you, Dr Northan. Questions, government members?

Mr Maves: I'll start, and I know Mr Hastings has a few.

How long have you been the medical officer of health?

Dr Northan: For Algoma, eight years.

Mr Maves: What type of dealings would you typically have with the children's aid society here?

Dr Northan: It could be through the many children's programs that we operate. We have common interests with children at heart. We have our Healthy Babies, Healthy Children program, our infant development program and several other programs where we would be in contact with young children and their families, and if we saw any evidence of abuse, the CAS would be contacted in those cases. So that's one route for being involved with them; the other is the prevention side that CAS is interested in, working at preventing situations where children would come to harm. We act together to address those situations preventively even though enforcement might not be a part of that action.

Mr Maves: A couple of times today we have talked about how the current act puts an onus on professionals to come forward in the workplace if they have reasonable grounds to suspect abuse, and there's a \$1,000 fine if they don't do that. You've proposed something very interesting, in my view, that "flagrant inaction to come forward to protect children and youth from abuse should clearly be a cause for dismissal from a job." Right now, unfortunately, I know there are some cases in the College of Teachers where the actual abuser has not even lost their certificate nor been dismissed from their job. That's a very interesting angle you've come at, and I know that a lot of folks feel that the \$1,000 fine right now for inaction is not enough. Do you want to expand any further on that?

Dr Northan: I used the analogy to theft. I guess it wouldn't be just theft of a pen, but theft from a company is grounds for dismissal, so why wouldn't turning a blind eye to the grief of a child be the same thing? I would certainly put it at least on the same level, if not higher, for the consequences. We do know that cases of children being abused have gone on for many years where there was knowledge around but nobody did come forward. I know ethics is one part; most people would feel an ethical reason to come forward. But beyond that there are

other forces that obviously sometimes prevent people from revealing the concern that they see. I guess there's peer pressure, if some of these people in the workplace are your friends and there are other people who know each other and what's the pressure on you. But certainly if your job is at risk for not coming forward, to me that would protect the child from too much of this "Let's just turn a blind eye" sort of thing.

There are so many cases of obvious grief to not just one child but many children from this kind of inaction by people. So if you get hired and it's up front a part of your conditions of employment that you have a responsibility to protect the children you work with and if you don't, you won't be working here any more, I think that's fair enough.

Mr Hastings: Thank you, Dr Northan, for appearing before our committee today on a very important subject, relating partly to the tragedy that's occurred in this city over the last few years.

When you say there ought to be better training, because prevention is a cure rather than going at it post-haste so to speak, can you inform us as to what kind of approach you've made to the Algoma and Soo children's aid society to undertake the new training in terms of prevention, dealing with abuse by your own staff, or have you had an ongoing arrangement with other public health units in the north or through the association on this subject matter?

Dr Northan: On this subject, in a general way, we certainly have a role along with other agencies to deal with abuse of children and youth or abuse of anybody, including the elderly. So we've had a general role. We haven't had a specific role in the sense of what I've suggested here. I put an annual presentation or interaction with staff to go over the issue so it's kept clear in people's minds what the issues are, what the effects are on children, what the duties are of staff who take care of children. There isn't anything formal in place like I suggest, but certainly I know if this kind of thing was endorsed, the CAS and other partners in the community would work together to make sure that those kinds of workshops were conducted. It could be staffed from a number of appropriate agencies that could deal with that.

Mr Hastings: It's been suggested by other groups making presentations today that there ought to be some kind of—I don't like using the words "swat team," but some kind of an external group to deal with conflicts of interest involving children, nurturing and providing services to children, by community agencies in rural and small-town Ontario. As a teacher from small-town Ontario a few years ago, I've seen some of these inhibitions, or the denial that was brought up regarding the whole allegation of sexual abuse of children. I'm wondering if you would comment as to how comfortable you are with having such a group undertake the needed investigation should this occur anywhere in Ontario—is it some sort of a lesson, hopefully, that we can learn out of this terrible experience in the Soo?—and what your comments would be as to whether the CAS, anywhere, ought to be one of

the lead investigating agencies into such allegations of sexual conflict or any other kind of abuse if that agency, that CAS, had in any way, shape or form contributed to those allegations. What's your thinking on that subject?

Dr Northan: It's kind of a long question and I might have missed pieces of it but I'll try to answer it. If I don't seem to do it as well as your question directs me, just let me know.

My thought was the CAS would be the body that would look into these situations. They are the enforcers. I didn't know if I heard you suggesting that they were part of—

Mr Hastings: As legislators, sometimes conflicts occur when agencies that provide the service, whatever it is—in this case it's services to kids—are also the regulators. It's like me being a referee in a hockey game and then I decide halfway through the second period—a certain side's winning—that I want to join as a right-winger or as a centre person and also want to be the referee. You can't do that, in my estimation. You're either going to have to be the regulator or you're going to have to be the provider. You get a confusion of roles in public agencies sometimes when you have that approach of an enforcement function as well as a providing-of-service function.

1350

Dr Northan: I suppose in some instances that could occur, but certainly in Algoma I have full confidence in the CAS as I've worked with them to fulfill that role. My underlying concern is the vulnerable child and youth who might be at risk. I think absolutely somebody has to get in there and put them first. I would worry less about the agency, if somebody figures who's the best agency to get in there—I feel CAS is quite appropriate—if somebody feels there's somebody else who should get in.

To me the issue is that somebody should get in there, investigate and do something about it, because it's just not right for a child in that situation to be left because of some kind of concern of, say, who's the most appropriate, or is there some conflict? I'm quite comfortable in the role CAS has played in my interaction with them. I think they should be in there when there is a concern, and they should be able to act on the concerns and put an end to a problem if it's there and be sensitive about it. You saw the word "sensitive" in the paragraph I used there, and obviously sensitivity for all stakeholders, including somebody whom there might be allegations against, is very important.

Mr Hastings: Thank you very much, doctor, for your views.

The Chair: Thank you, Mr Hastings.

Mr Martin: If you could try to keep it a little brief. I let them go on a little bit too long. Sorry about that.

Mr Martin: Thank you for coming today and making the presentation. It's really important, when we're developing public policy here, that we hear from folks who have responsibility in communities as to how they see things that we're considering and what we might put in place, because it ultimately affects all of us.

You suggest that society should ensure comprehensive protection of vulnerable children and youth from abuse. Could you expand a bit on the term "comprehensive"?

Dr Northan: I guess "comprehensive" means there aren't any gaps. What I'm looking at here and what I'm understanding here is that there isn't a total comfort level. I know by the CAS, from talking to them and from certainly my understanding of things, that in an institution setting and some of the things that are outlined in the act that is being looked at here, there isn't a comfort level that somebody can get in and look at a problem and deal with it quickly. There is still a chance for things going on either unreported or perhaps undealt with, and that's my concern, that children are the vulnerable ones. As I said, if they're vulnerable by age, experience, position and authority and they don't have the ability to get themselves out of a situation that they find themselves in, I feel clearly that comprehensively we should be able to make children feel safe in any setting, whether it's their family setting or in any of the community settings that they're in.

Mr Martin: To follow up on that, and this will be my last question, you then a little lower say, "The children's aid society should have no barriers to reasonably and sensitively pursue and deal with a concern of abuse of children or youth in any setting, home or institution." Could you expand on the term "reasonably and sensitively"? It seems to be a grey area that I think we want to capture here.

Dr Northan: Yes. Sometimes trying to be absolutely detailed is difficult because it's hard to cover everything, so I was general. I guess "reasonably" again means fairness is there for all stakeholders. Certainly the person the allegations are made against, you want to be reasonable about that, so you have a good reason for being in there, and that's fair enough. "Sensitive" means people are involved here, children and also the person the allegations are made against. So you want to be sensitive to the whole situation and be fair to everybody involved, but you want to get down to, "Is there a problem?", and if there is, deal with it.

The Chair: Thank you very much, Dr Northan, for your presentation this afternoon.

ZONTA CLUB OF SAULT STE MARIE AREA

The Chair: The final presenter for this afternoon is Patricia Tossell, the corresponding secretary for Zonta. I understand we have two more speakers, Dr Susan Febbraro and Ms Kathryn Buchan.

Ms Patricia Tossell: We didn't know if the committee was familiar with Zonta, because there aren't a lot of Zonta clubs in Sault Ste Marie, so we've given you some information on Zonta International and on our club. I'll just highlight that to begin with so you'll know that we're an advocacy group that is concerned with the issue of violence against women and children, which is why

we have made ourselves familiar with the bill and various other pieces of information in appearing here today.

Zonta International is a non-profit service organization of business and professional women who work to improve the status of women and children worldwide. Zonta is recognized by the United Nations as one of 1,500 non-governmental organizations in the UN Department of Public Information and has a special consultative status with the UN Economic and Social Council.

We have provided an attached information sheet on Zonta International's program to eradicate violence against women and children, known as ZISVAW. The objective of the program is to raise awareness and promote collaboration, such as today, among individuals, organizations and governments working toward the common goal of a world free of violence against women and children.

The Zonta Club of Sault Ste Marie has 32 members representing professionals in law, medicine, teaching and social service sectors. We are from a community now painfully aware of the need to protect children from abuse in the very institutions where they should be safe and protected from harm.

With me today is Susan Febbraro, who is a family doctor and the medical director of the Sexual Assault Care Centre in Sault Ste Marie, which is the agency locally that does the forensic investigations of sexual abuse of children, and adult abuse as well. Kitty Buchan is also before this committee. She has been a member of many volunteer organizations in the community and is a retired office manager. Between the three of us, we are the mothers of 10 daughters who have all been educated in the elementary and secondary school systems in Sault Ste Marie, so we've been following with great interest, as has our whole community, this serious problem, wondering how it could happen in our community, and grateful to Mr Martin and those who have presented here today for becoming involved in a solution.

What we wish to do today is to support the initiative of Mr Martin in Bill 118, with the proposed changes recommended by the Children's Aid Society of Algoma. We also recommend that the following change be considered: that the age of the children protected by the provisions of Bill 118 be increased from under the age of 16 to under the age of 18, to reflect the United Nations Convention on the Rights of the Child, article I, which requires Canada and Ontario, as signatories to the convention, to make their legislation comply with that definition of "child."

We also would like to recommend that the children's aid societies of Ontario be provided with adequate funding to educate senior staff to conduct the investigations required by the bill. We feel there's a very high level of skill required and that's part of our recommendation.

Those are our recommendations. Do you have any questions?

Mr Martin: Thank you for coming forward today and participating in this very important forum where together,

as you say, we develop public policy that will go a distance to responding to challenges that we face as a community as we try to protect each other. I just want you to know how pleased I am that you've taken that responsibility seriously and have looked at this bill and come forward to make some very valuable suggestions as to things we might do.

I wanted to get a sense from you and to share with the panel here, who are not from Sault Ste Marie and who are going to be very instrumental in moving this through the system as we move back to Queen's Park with it—and I asked this question earlier today—has much changed in Sault Ste Marie re the whole question of the protection of children since the very dramatic and stressful DeLuca event, in your experience and in your view?

1400

Ms Tossell: I am actually a lawyer. I have experience in family law and in child protection law, but I have not had to deal with sexual abuse allegations in schools or institutions. I have dealt with a lot of adult clients who have been victims of sexual abuse as children and I've certainly seen the impacts on their lives, and I can say they greatly number, the clients I have who have been parents of children in need of protection—that it really greatly affects their ability to parent, having been the victim of child sexual abuse, including at school.

But perhaps Susan Febraro would have more of a comment on whether things have changed since we became aware of Mr DeLuca's abuse in the schools.

Dr Susan Febraro: People in Sault Ste Marie are highly sensitive to this issue now and I think probably we are getting more and more reports of child sexual abuse, so there is an increase in the number of children we examine and an increase in the number of the children who feel safer in disclosing. It's not uncommon now for children to disclose at school and for the teacher to call the children's aid. That's a change I have observed.

Mr Martin: Looking at this bill, which in my view will give the children's aid society more ability to actually do that investigation and make it more comprehensive and to share information with people that will lead to some action being taken that will be more protective of children, you've decided to focus on a couple of pieces. One is raising the age from 16 to 18. Do you want to expand on that a little bit? Why from 16 to 18?

Ms Tossell: We feel that a 16- or 17-year-old child within an institution is still very much a child in need of protection, who ought to be protected by the services of the children's aid society if there is any concern about physical or sexual abuse within, for instance, the school or caregiving institution.

Mr Martin: Are there any examples you're aware of where we've had 17- or 18-year-olds or people who are over that age whom we determine to be children, who have sort of fallen through the cracks, that you're aware of?

Ms Tossell: Actually, a child is a person under the age of 18. It's the 16- and 17-year-olds we're talking about who aren't covered by the bill, who are still very young and very vulnerable to a teacher or a caregiver in an institution.

Mr Martin: There was another issue, aside from this, that was raised this morning, that we didn't get a chance to talk about. I missed asking a question about it. It's the question of protection for whistle-blowers. We've had a couple of examples in our community where people have actually had the courage to come forward and tell somebody that abuse had occurred, and they become a victim in many interesting and disappointing ways.

There was a suggestion this morning that we build into this act protection for whistle-blowers. What do you think?

Ms Tossell: If it's not there now, it should be there, for sure. I very much, as someone in the audience, commend the previous witness for his recommendation that people who fail to report could be subject to dismissal.

Then there is less likelihood that a whistle-blower would be penalized. If there are serious consequences for not whistle-blowing, of course they must draw attention to abuse that they become aware of.

Mr Maves: Thank you, ladies, for coming forward today and making your presentation. I have a Zonta Club in Niagara Falls. It's a community with 76,000 people, very close to the population of Sault Ste Marie. Mr Martin and I over lunch talked about us both having a large Italian population within our communities. I think we have a lot more in common, even though we're about eight hours apart by car, than many people might think.

One of the statements you made in your comments kind of struck home with me. You talked about the fact that as parents we send our kids to school because it's a place for them to grow up, for them to be properly nurtured, to learn. When you send your kid off to school, it's a hard thing to do, to watch your four-year-old, as I did this year, go off to junior kindergarten and turn and walk away with classmates and leave you behind. I think one thing that parents never really think of is that they're sending their kids into danger. It's horrifying to think that you could be willingly sending your kids into a dangerous situation.

We had a colleague, a former colleague of ours who was elected from 1995 to 1999, who lost a daughter at 15 years of age. They had taken her to the doctor because she had a stomach ailment. He prescribed some medication for her and that medication ended up, as far as we know, killing the daughter. What a tragic thing and what a difficult thing for our former colleague: to know that I took my daughter someplace to get them better, to help them, and ended up doing the exact opposite.

So it's really difficult for me to think, as you had put it, that these schools and daycares and other places like that are places you send your kids to be nurtured and taken care of and where they're going to be safe and learn, and it's hard.

In Sault Ste Marie, some people have kind of beaten themselves up a bit today about the whole DeLuca case. I

think anyone who had direct knowledge and did nothing should beat themselves up, quite frankly, and I think most people would agree with that. But as a city in general, I think you have to be careful about beating yourself up too much, because I noted in the DeLuca report, he said: "It must be concluded that the DeLuca case is neither aberrant nor out of date. Teacher sexual misconduct is sufficiently prevalent to warrant special attention." We know that there are all kinds of cases all across the province of Ontario, throughout the country and in other countries.

I think one of the things that's sad about the whole DeLuca case and the Robins report is actually how little attention the Robins report got anywhere but in Sault Ste Marie, because if there is a type of systemic protecting of abusers or a systemic turning of the head to this type of abuse in a place like a school system, I think the attention of the rest of the province should be drawn to this.

I really appreciate you folks coming forward today and making the comments that you made. It's obviously hard to come forward and talk about this for a lot of folks. I want to thank everyone who's come forward today in Sault Ste Marie with some very good suggestions. As Mr Martin said, the suggestion from the medical officer of health about maybe someone should lose their position for not reporting is probably a good one that the College of Teachers should look at. So I'm going to make sure a lot of this input gets in. Again, I just

wanted to thank you. I guess I didn't ask a question. A lot of times, as politicians, we end up making statements and don't leave time for questions, but I really wanted to thank you, as our final group, for coming forward today.

The Chair: That concludes the Sault Ste Marie portion of the public hearings. We'd like to thank you all for taking the time out of what we know are very busy schedules to make presentation to us today. We will be reconvening on Monday at Queen's Park for another day of hearings, and the clause-by-clause consideration will be some time after the House reconvenes. If you would like to know when that is, please contact the clerk, Mr Prins, and he will advise you of the date once it is set. Thank you very much.

Mr Martin: I just want to briefly thank you, as Chair, and the committee for taking time to come to Sault Ste Marie today. I know that this is a private member's bill, and a private member's bill, no matter the government, doesn't always get the consideration that those of us who sponsor them think that it should. I have to tell you that in this instance I'm very satisfied and happy and pleased and want to thank all of you for the co-operative nature of the discussion that we've had around this. I'm hopeful that we will do something positive and constructive in the interest of protecting our children.

The Chair: Thank you, Mr Martin. This meeting is adjourned.

The committee adjourned at 1410.

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Lundi 19 février 2001

**Standing committee on
justice and social policy**

Child and Family Services
Amendment Act, 2000

**Comité permanent de la
justice et des affaires sociales**

Loi de 2000 modifiant la Loi
sur les services à l'enfance
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Monday 19 February 2001

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Lundi 19 février 2001

*The committee met at 1108 in room 151.*CHILD AND FAMILY SERVICES
AMENDMENT ACT, 2000LOI DE 2000 MODIFIANT LA LOI
SUR LES SERVICES À L'ENFANCE
ET À LA FAMILLE

Consideration of Bill 118, An Act to amend the Child and Family Services Act / Projet de loi 118, Loi modifiant la Loi sur les services à l'enfance et à la famille.

The Chair (Ms Marilyn Mushinski): I'll call the meeting to order. Good morning, ladies and gentlemen. This is a meeting of the standing committee on justice and social policy to consider Bill 118, An Act to amend the Child and Family Services Act. We will begin with the official opposition's statements and questions for 20 minutes.

Mrs Leona Dombrowsky (Hastings-Frontenac-Lenox and Addington): Thank you very much, Madam Chair. I am delighted to be here this morning to make representation on behalf of the opposition party with respect to Bill 118. I applaud my colleague Mr Martin from Sault Ste Marie for introducing this bill that is intended to protect children in the province of Ontario. In spite of what has been presented in the media recently, the Ontario Liberal Party will support any legislation that will ensure the safety of children, particularly children in the province who are more vulnerable in that they are in care situations.

Dalton McGuinty has made it abundantly clear on many occasions—and I would suggest as well that one consider the opposition record: the number of private members' bills, Liberal bills, Rick Bartolucci's three private member's bills, that look to ensure the protection of children in the province. So I'm very happy to be here this morning to speak in support of Bill 118.

I certainly hope the government does not intend to undertake partisan tactics. I think we need to act now to implement legislation, whether it comes from the opposition or the third party, to act in the best interests of the children of the province.

My colleague from Sault Ste Marie became painfully aware of how people might take advantage of children in an institutional setting. I can't imagine the pain that is suffered within a community when this happens. Mr

Martin has taken the first opportunity he had to ensure that a situation of this nature could not happen again to vulnerable children in our province. That is the intent of this legislation, and certainly it is worth supporting.

We support this bill because it does expand the authority of children's aid societies to protect children. It enables them to conduct and communicate the results of an investigation. That ability right now, at the present time, is very limited and, because it is limited, children are therefore at risk in the province.

Very sadly, it is true that children do suffer abuse, not only at the hands of their parents, but it has happened that they suffer at the hands of those in positions of authority, positions of responsibility, people who are trusted by society. I think it's important to say at this point that the Liberal Party certainly respects and believes that by far the majority of people who are engaged in activities that support and care for and serve children are good and honest and reputable. But it does happen, sadly, that not all people are of this nature, so we do need laws that ensure the safety of children. I also believe that the people who care for children need and deserve protection as well. I believe that full investigation and full disclosure is of benefit to both parties in that particular case.

This bill is for children. It is to better protect them, and it's to ensure that they have a voice. They don't vote; they don't make presentations to committees. We are charged with that responsibility. Certainly I accept that and I'm honoured and I'm very vigorous in my attempt to ensure that children do have a voice so that they are protected.

I did some research last week, and I was very alarmed by the fact that the number of abused children—and I think it's interesting to note that the number of abused children since 1996, since the time this government took office, has increased by 50%. I would suggest that's not a statistic that we will hear in the Legislature, presented by the government, when we hear the economic report card. We don't hear about its impact on children. But it is a fact that there are 50% more children who have been abused and are in care in the province of Ontario than in 1996. So I would suggest there's an even greater need for this kind of legislation. There are more children being abused and even more need to ensure that there is a process in place to hold those who might abuse children more accountable.

I have the figures; I think there are some looks of disbelief from across the table. In January 1995, there were 10,639 children identified as abused in the province. On January 1, 2001, there were 14,956 children identified as being abused, sadly. Instead of those statistics improving, they're not. In fact, I think they are embarrassingly high. That's something we'll pay some more attention to in a later forum. But I think it's important to share those numbers this morning with this group of people so there's a very clear understanding that in this bill, Bill 118, when we talk about protection of abused children, we're not taking about an insignificant number; in fact, we're talking about a number that's rising at an alarming rate.

I believe that even this government is recognizing we're on the verge of a crisis by the amounts of money that they're throwing in this direction. While any dollars that are offered in support of children at risk—I think that probably we need to take a look at how and when we're spending the money. Instead of throwing money at the problems and the consequences, we need to be investing in ensuring that in fact these situations do not happen.

I support those who come to speak on this bill and certainly hope that it or an amended version of this bill will become law soon. That's what's really very important to understand today: we need this to be the law soon.

When I was doing my research on this bill and I came to be aware of the particular case in point that gave rise to the legislation, I became aware that in 1999 the Honourable Sydney Robins issued a report, *A Review to Identify and Prevent Sexual Misconduct in Ontario Schools*. Mr Robins was appointed by an order in council, and in his report, he made a recommendation with regard to an amendment to the Child and Family Services Act. In fact, his recommendation is what we see in Bill 118, so I would offer that there is a very sound support in the report from the Honourable Sydney Robins that supports this legislation as well.

Finally, I believe, and my colleague from Sault Ste Marie has indicated, that Bill 118 is not the final word on what we as legislators can do for Ontario's children. I would suggest that if we wanted to embark on an exercise that would perhaps expose shortcomings of the bill or if we wanted to become especially particular on the wording, there could probably be some rather lengthy and not especially productive debate on that. The bottom line is that there are children in Ontario who at this time, with the present act, are not protected. Mr Martin has introduced a bill that will begin to enable people who provide service and protection for children to do their job better.

I expect that you will hear in subsequent presentations from those agencies and individuals who will also support the legislation. I strongly encourage and urge all members of the Legislature to support it. It may require some fine tuning, and certainly we would support that, but what's most important for the Liberal Party, for the opposition, is that action be taken precipitously, so the

kind of scenario that unfolded in Sault Ste Marie does not happen with other children in institutional settings in Ontario.

Madam Chair, that concludes the more formal part of my presentation. If there are any questions, I will do my best to answer them.

1120

The Chair: Thank you, Mrs Dombrowsky. Are there any questions?

Mr Bart Maves (Niagara Falls): Questions or statements?

The Chair: There is up to 20 minutes for statements and questions for the official opposition and the third party.

Mr Maves: I appreciate the member's comments. One of the things she talked about at the outset was an increase in children in care, kids at risk who are now in the care of children's aid societies. The reason for that—and I think anyone at most of the children's aid societies would agree with this—is a lot of the changes the government has made over the past five years with regard to CASs.

We've instituted a new risk assessment model, which is a methodology for CAS workers to better determine if someone is in danger. We've doubled the budgets for CASs across Ontario, and this is as a result of a new funding formula. Rather than saying, "You get \$10 million. Go out and look after kids in your area," the budget now usually works on volume. CASs now have the budgets. As I said, most of them have doubled across the province, so they can hire workers to look after kids and even investigate all the reports that come in to them.

Because of changes in legislation, there is now increased responsibility on professionals to report abuse. We talked about this in Sault Ste Marie last week. With the bill that was passed in 1999 and implemented in March 2000, if a teacher has reason to suspect that abuse is going on in a school—a teacher of a child—they now have a responsibility to report that abuse and in fact are liable to a \$1,000 fine if they don't. That wasn't there before, and so there's increased reporting. Mr Martin asked the folks in Sault Ste Marie, "Is it getting better? Is it changing?" Just about everybody, when asked that question, said it is. There seems to be more people coming forward reporting abuse, and that's a reason we have more kids in care.

We've also lowered the definition. It used to be that CASs couldn't get involved as often in reported abuse cases because of the definition. The test of when they could get involved was too high. I think some of the words might have been "imminent danger." I can't remember the exact wording, but it was a higher test. Now we talk about someone having a suspicion, reasonable grounds to suspect there's abuse. It's lowered the bar, and so there is more reporting and the CAS can get involved a lot easier than they could before. So abuse that maybe wasn't getting reported does get reported now.

In the Robins review, which we appointed, we asked Mr Robins to review the DeLuca case. As I said in Sault

Ste Marie on Thursday, I personally don't think it's had enough attention province-wide. That report talked about the probability of a lot more abuse happening in the school system and a systemic burying of heads to the problem in the school system. Maybe the DeLuca case got a lot of play in the Sault Ste Marie media and in the surrounding environs. It didn't get nearly as much publicity, nor did the Robins report get very much, across the province. Basically, I think all the people—the government, the school boards, the teacher unions, everyone—just said, “Yes, we agree.” When everyone agrees with something, the issue tends to die. No one was out there opposing the Robins report, and so it died. That's unfortunate, because I think it's important that people see the Robins report and realize what happened in the DeLuca case. We were there on Thursday, and we found out that on Wednesday—

Mrs Dombrowsky: That's not a question.

The Chair: I assume that's a point of order. It seems like an awfully long question, but—

Mr Maves: That's why I asked at the outset, but I'll put it in the form of a question. All these things combined say this is why the number of kids in care has increased, and we heard that from folks. Maybe I'll put it in the form of a question to the member opposite. All those things—the new risk assessment model, the doubling of budgets, the children's services act reform in 2000—are the main reasons we have more kids in care. Does she not see that as the rationale for more kids being in care, and does she not see that as a positive step because it has improved the ability of CASs to get involved and improve their resources?

The Chair: You have about three minutes to answer that five-minute question, Ms Dombrowsky.

Mrs Dombrowsky: First of all, my understanding is that the changes to the Child and Family Services Act came into effect in May 1999 and not March.

Mr Maves: March 2000.

Mrs Dombrowsky: March 2000. OK. When I look at the figures over the last five years, even previous to the implementation of those changes in legislation, the numbers were rising. Even prior to the requirement of the law that would make it easier or facilitate reporting, the numbers were increasing. That the changes were made is certainly laudable, but to suggest that's why there have been increases—that now it's easier to report, and that's why we have more children in care—I think, is a less than accurate presentation. I have a graph here, and I have the numbers. Every year the numbers have increased, if that's the point you wanted to explore.

In terms of the resources that are provided to children's aid societies, while I'm sure children's aid societies appreciate the support that's very necessary, because there are these children being abused, the point I would like to make is, why is that happening? Why are the numbers increasing? Maybe it's because we've got a lot more children in families living in poverty. Our party is not the only group that would advocate that because

there are desperate family situations, they are moved to very desperate actions.

In response to your point on numbers, the numbers were rising before the newly enacted legislation came into play. I'm suggesting as well that the government has a responsibility to put in place programs and to assist and support families so that family situations don't deteriorate to the point where children are being abused. There is certainly a correlation between poverty and abuse.

The Chair: Mr Martin.

Mr Tony Martin (Sault Ste Marie): At the outset, I want to say how thankful I am to both the Ontario and the Algoma children's aid societies for the excellent work they've done in bringing this bill forward with me, so that we might move quickly to limit the possibility of children being abused again in the way that happened in Sault Ste Marie and in many other institutions across this province for a long period of time. Their contribution has been invaluable. Without them, we wouldn't be here today. I think it's an indication of the concern the Children's Aid Society has, not only in the work they do every day in trying to protect children and families, but in the work they do in helping those of us who have another mandate, which is to make sure the framework within which they work is helpful to them in doing their work. A lot of what I will be sharing with you today by way of comment on this bill is work that in fact has been done by the children's aid society in support of the work we do on this together.

The other thing I want to say is that I've appreciated the non-partisan nature—up until about Friday and this morning—of the discussion we've had on this bill, both upstairs in the House and around this table. I still feel there's support from every side to move quickly to make sure we put in place whatever is required as quickly as possible—this bill is not complicated or difficult; it's not an omnibus bill of any sort—that no more children are in danger of being abused out there, determined by at least the work that we can and should be doing.

1130

I just want to talk for a few minutes about where this bill came from, what it's about, and to some degree what it's not about, so that we might sort out some of the challenges and difficulties that may be floating around that might get in the way of this thing moving forward. I want to share a bit of what we heard in Sault Ste Marie on Thursday and then close up with some thoughts on why we need to move this through the system and get it done as quickly as possible.

I was privileged on Friday to get a phone call from the Ontario Metis Aboriginal Association in support of this bill. They hadn't heard soon enough to actually come and make a presentation. They would have liked to be before us on Thursday in Sault Ste Marie, but they didn't get word on time. They weren't able to prepare the brief, and so they will be mailing a brief in to the clerk, who will share it with the rest of us. It's a very good brief. It's one that all of us should look at, because it not only addresses

the situation where Sault Ste Marie and DeLuca are concerned, but it talks about the abuse that that nation of people endured at the hands of institutions over a number of years and how they feel that anything we can do to limit that is good and that this bill in particular will go a distance to giving them some relief that finally some things are being done that need to be done.

They say in the opening of their brief:

"The precipitating factor for this bill was the report of the Honourable Sydney L. Robins on the incidents involving Ken DeLuca, as they pertain to the operation of the Sault Ste Marie Roman Catholic School Board. They involve 13 victims over a 21-year period, with 14 separate sexual offences. School and community officials engaged in a cover-up of these offences until they were finally brought to light." And this is true.

"After the submission of that report to the Honourable James M. Flaherty," by Justice Robins, James Flaherty being the Attorney General of the province, "the Children's Aid Society of Algoma responded" quickly "in June 2000, suggesting that children's aid societies need: a clear definition of their role and authority with respect to investigating and preventing institutional caregivers; the power to take action to prevent further abuse when children are at risk; and the authority to report the results of investigations of institutional caregivers to the people in charge of the institutions."

I immediately responded to the children's aid society to say to them, "It's my job as the MPP for Sault Ste Marie to work with you to make sure the changes in legislation that you've indicated are needed in order for you to be able to do your job get done." We agreed to work together to bring this forward. So here we are today, a good ways down the road to actually enacting something that we feel, and I believe the whole of the Legislature felt when we debated this at second reading, is needed to be done. I'll mention at the end some concerns I have around the possibility of the House proroguing and then what happens so that everybody understands that we need to continue to find some way of making sure, if that in fact is what happens, that we get this bill brought forward quickly again.

I'm not claiming any ownership of this. If the government wants to bring it forward or if they can suggest a way I might bring it forward again, or the Liberals, that's fine by me. The bottom line here is that we get this in place and change the law so that the children's aid societies can in fact do their job in terms of abuse where institutions are concerned and children will be less at risk out there across the province.

What is the bill about? The most important things that Bill 118 will accomplish are: (1) it will clarify the ability of the society to report the results of investigations in caregiving institutions to the heads of institutions and to make recommendations to the heads of institutions for alleviation of risk to children following the investigations; and (2) to secure court orders forcing institutions and their component staff members and volunteers to comply with recommendations of the society to alleviate

risk to children within the institution. Those are the two main pieces of this legislation.

It's useless for the children's aid society to be able to and in fact be mandated to investigate reports of child maltreatment within institutions but not be able to report the results of its investigations to the institutions, only to the alleged perpetrator, and make recommendations to the institution regarding steps to alleviate the risk and, as with maltreatment within families, secure a court order from the court to force the institution to take remedial steps to alleviate the risk if the institution fails to do so notwithstanding the recommendations of the children's aid society.

That's basically what this bill is about. There are a couple of other sections in the bill that are important, but they're not as important as those. I'll talk to those in just a couple of minutes.

What is this bill not about? It's not about the duty to report, because the government and the Legislature passed legislation in April 2000 that gives us the power to force people to report abuse of children. The government tightened up the duty-to-report section in amendments to the Child and Family Services Act which came into effect in April 2000, and did so in a way that covers duty to report child maltreatment in caregiving institutions as well as in families. What must be remembered is that there already did exist a duty to report child maltreatment within the caregiving institution by professionals such as teachers, physicians, nurses, clergy and non-professionals, and that the government already did tighten up that duty to report in the amendments to the Child and Family Services Act which came into force in April 2000. There was some degree of discussion in Sault Ste Marie last Thursday about whether in fact there was the duty to report where institutions are concerned. It was brought to my attention over the weekend in further discussions with the children's aid society and some of their legal advisers that in fact that was already there.

Having said that, though, there is one additional, fairly minor way being suggested in Bill 118 that the duty to report could be tightened up. Currently without Bill 118 it is not as clear as we would like to see that when a person has a duty to report information to the society, that duty continues indefinitely until the report is actually made. The vagueness which exists currently in the law stems from the Provincial Offences Act, which goes back a ways to 1990, subsection 76(1), under which the offence for breach of the duty to report is prosecuted. It provides that no charges for the offence can proceed following "six months after the date on which the offence was, or is alleged to have been, committed." That's a piece of Bill 118 that we think will make the law work better and reduce the threat of danger to children out there.

Having said that, I just want to focus for a minute on some of the conversation we had on Thursday in Sault Ste Marie so that those who weren't there might understand the flavour and the nature of that and factor it

into their consideration of this bill and hopefully work with me to bring forward amendments, if necessary, to respond to some of the concerns that may be raised and to make sure we put a bill in place here that we're all satisfied will do the job that Justice Robins suggested needed to be done and that the children's aid societies have indicated they need us to do if they are going to be able to carry out the very important work that they do.

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Just to begin then, during the presentations to the committee in Sault Ste Marie one of the common suggestions of presenters in the community was that there ought to be a further tightening up of the duty to report in the area of consequences for breaches of the duty. That is, the current provisions of the Child and Family Services Act, subsection 72(1)6.ii, provide that a person convicted of the offence of breaching the duty, upon conviction, is liable to a fine of not more than \$1,000. The bill does not address the adequacy of this consequence for breaching the duty. It appeared to be a common suggestion of the presenters to the standing committee in the Soo that a fine of up to \$1,000 is an insufficient consequence for a breach. A suggestion made by one of the presenters was that a breach be sanctioned by loss of employment of the breacher.

It's interesting to note that other breachers of the CFSA are sanctioned at CFSA section 85 with "a fine or a period of imprisonment of up to one year." It is curious that given the very serious results of a failure to report, the consequence is so minor relative to the consequences of other breaches of the CFSA. Certainly it would not be every case of failure to report that might merit a consequence greater than a fine of \$1,000, but with respect to some cases of failure to report the members of the community of Sault Ste Marie at least appeared to feel that the consequence of a \$1,000 fine is insufficient.

Now, we're not suggesting in Bill 118 that we at this time go there, but it certainly is something to consider as we go down the road. If people feel strongly about that, it could be considered under Bill 118. If, when we get together after this and we consider amendments in clause-by-clause, we want to do that, I'd certainly be in support of looking at that. In any event, the bill does not address the issue of the consequence for the breach of the duty to report.

In Sault Ste Marie all presentations seemed to support the legislation, particularly the children's aid society's right to investigate report findings and take action to protect children. All, including the committee, acknowledged that the physical and sexual abuse of children by institutional caregivers is a recurring event and corrective action is necessary. Unfortunately, the discussion on Thursday seemed to focus on duty to report more than the actual bill itself and the power of the children's aid to investigate. While we can tighten this up, the two critical areas are, as I said before, the authority to report findings and the authority to seek a court order if children are still left at risk.

Some of the issues raised during the day were, for example, who should be responsible for conducting investigations? There was a suggestion that, given the nature of the type of investigation that's often required here, perhaps a coordinated effort by the police and the children's aid society might work better. It was also suggested that in circumstances where, mostly in smaller communities, there might be a conflict of interest in terms of the interrelationship of people, that a third party be established to investigate because the children's aid society itself may be somehow involved or there may be the perception of the person bringing a case forward that they wouldn't get the same due process or they wouldn't feel confident that the children's aid society worker perhaps would do the kind of job that is required. There certainly are some valid reasons for looking at that. Again, it's not part of Bill 118 but is certainly an important consideration.

It was also suggested there should be greater education and awareness of the duty to report so that people understand what their responsibility is and, in particular, that those within the institutions charged with carrying out the investigation understand what that's all about as well.

Some thoughts put on the table regarding the definitions of "caregiver" and "caregiving institution" suggested that they should be broader and I think on this we all agree. This can be done by providing a generic definition and removing the list of organizations and professions, as is done elsewhere in the act. There is an amendment on the table now by the children's aid society to in fact do that.

It was suggested that section 75(8) be removed from the amendments, because the child abuse registry needs to be revamped. Again, I have no difficulty with that. However, it's an area of this that needs to be visited at some future date, and I would suggest the sooner the better so that that vehicle, that registry, can become more useful to people working in the child care field.

There was also a very strong suggestion made on Thursday that for people who lodge complaints, some kind of whistle-blower protection be put in place. When staff come forward there is often a backlash within the institution, and there should be penalties for this as well as a fund to cover legal costs, it was suggested, because in Sault Ste Marie there is still a person who was the whistle-blower in that incident, who tried to deal with some very significant legal costs because of the action that was brought against her by various of the players. That, in the minds of some of the presenters and certainly in my mind as well, I have to say, is totally unfair. That somebody who had the courage to blow the whistle, to bring the case forward, to actually report, should now be saddled with legal costs that caused the kind of personal stress that in this case is happening is, in my view, unacceptable. The current legislation does protect them from civil action. However, some protection needs to extend to the work site. This is a very difficult area, and

the need for protection probably extends beyond this area.

There were a number of other issues put on the table on Thursday, all of them very important. But the two most important priorities, in my mind and the children's aid society's mind, are the ability to communicate the results of an investigation, which is section 15, and the right to seek a court order to protect children at risk. Access to children when conducting an investigation is also very important.

Lower in priority but also very important in the bill—and I suggest that we need I think at least to take a look at them, but if it gets in the way of this bill moving forward, we can discuss that and find a compromise that will work for all of us—is the need to strengthen section 72, the duty to report. There has been a recent legal precedent set, as well as some of the changes being proposed to the Provincial Offences Act. The amendment, however, that we have in here would make the legislation clearer in this matter and save us all a lot of confusion.

Also, access to the child abuse registry, subsection 75(8): we agree that this should be dropped at this point, if necessary, because the registry doesn't have a high enough threshold to protect individual rights. With the new computer database and the new system, this should be more easy to construct. So we could perhaps visit that again at another time.

Just to wrap up—I've probably used and abused my time here by going over, as I often have a habit of doing—I just have one other piece to put on the record, and it comes again from the brief that was prepared by the Ontario Metis Aboriginal Association, if I can find it here. "The Ontario Metis Aboriginal Association urges this committee to make the Child and Family Services Act as effective as it can be to fight institutional abuse. Our fervent hope is that no child, male or female, white or aboriginal, need face the breach of trust inflicted by an abusive adult, be it a teacher, mentor, daycare provider, volunteer, institution or government agency." They say, "We failed thousands of aboriginal children over the last 100 years. We failed many non-aboriginal children in orphanages in parts of this country. Do not let it be said that we failed our children and grandchildren while" it was our watch. Their safety should be our sole and all-consuming focus. It is our sacred duty not to repeat the abuses and mistakes of our history."

I would urge this committee to continue down the track that it is on in moving quickly to make this Bill 118 the order of the day in Ontario so that if nothing else that has any positive ramifications at all comes out of the very difficult and tragic circumstance in Sault Ste Marie under the rubric of the DeLuca affair, we pass this bill, because the children's aid societies don't have the ability to do the investigation that they know they need to do in order to shed light, bring to the fore the reality and share that information with the folks who need to know about it so that plans can be put in place and ultimately, it is possible to bring a court order to bear.

Thank you for the time. I look forward to the rest of today.

The Chair: Thank you, Mr Martin. I believe you did mention in your submission that the written submission that you've received from the Metis community will be sent to this committee.

Mr Martin: Yes, it will be sent to the clerk, because I advised the gentleman who phoned me on Friday to do that. I suggested that the clerk then would share that with the rest of us.

The Chair: That's fine, thank you.

GEORGE HENRY

The Chair: We will turn to public submissions, Mr George Henry. Sorry we're a little late, Mr Henry. You have 10 minutes.

Mr George Henry: Good morning.

The Chair: Good morning. Take a seat there, that's fine.

Mr Henry: I was a ward of the children's aid back in 1962. The children's aid never gave me a report that I had a disease which was communicable. I believe this bill should be enacted to help the children's aid so when children are being released from their custody they give them as much knowledge as they can about their disease and why they were placed in there.

This gentleman over here said, "I would like third party investigations, independent party." I would like that too if you could put that in the act.

That's basically all I have to say except that I was in the children's aid and I wasn't informed of this for approximately 38 years. I have a copy of a clinical record there saying I had a disease which is communicable and I wasn't told about this. I found it out under the Freedom of Information and Protection of Privacy Act, which I should not have had to do.

I should have been told about this. I was released to my mother's custody. She should have been told of it, or my doctor, upon my release from the children's aid's custody. I wasn't informed of this.

I'd like to have protection there for the children after they get out from custody. That's basically all I have to say. Thank you very much.

The Chair: Thank you, Mr Henry. Are there any questions of Mr Henry at all?

Mr Joseph Spina (Brampton Centre): Thank you, Mr Henry. It takes a lot of nerve to come before a committee. It's very difficult, so we appreciate your coming before us today.

I have a couple of questions. You indicated you were a ward of the children's aid in—

Mr Henry: The Children's Aid Society of Metropolitan Toronto back in 1960.

Mr Spina: In 1960?

Mr Henry: I believe it's 1960. I have a clinical record here. It's a copy of a clinical record saying—

Mr Spina: That's fine.

Mr Henry: —what I had there, back in 1962. They took tests on me; they knew I had it there, but I wasn't informed of it. Upon being released—I was supposed to be a permanent ward, I believe, but I was released to my mother when I was 14.

Mr Spina: How long were you with children's aid?

Mr Henry: Approximately eight years.

Mr Spina: And you were released to your mother at the age of 14?

Mr Henry: Yes, approximately.

Mr Spina: So you'd been in there since you were six?

Mr Henry: Yes.

Mr Spina: When did you find about the communicable disease, at what age?

Mr Henry: I just found this out two years ago. It's hepatitis. When I asked for the records from the children's aid society a lot was blacked out there, and then I found out I was in the Orillia Hospital school. There's a copy of the record.

Mr Spina: Will you be able to leave copies of those?

Mr Henry: Yes, I would. I felt I was abused in the children's aid for not finding this out.

Mr Spina: Thank you, Mr Henry. We appreciate your time.

Mr Henry: You're welcome.

The Chair: Thank you for coming in, Mr Henry.

We'll recess for lunch and return at 1 o'clock.

The committee recessed from 1154 to 1300.

ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES

The Chair: I call the meeting to order. This is a continuation of the standing committee on justice and social policy to consider Bill 118, An Act to amend the Child and Family Services Act.

We have the Ontario Association of Children's Aid Societies, Mr Bernstein, director of policy development, and Ms Moshenko, director of quality assurance and outcomes. Good afternoon.

Ms Sandy Moshenko: Thank you very much. I'd like to thank you for giving us the opportunity to come and speak in support of this bill. What I'd like to do is give you a brief overview of what's in our written submission. I also have some additional information that I'd like to provide you with. I'm hoping that will take only about 10 minutes and that we'll have lots of opportunity for dialogue.

Just by way of introduction, Mr Bernstein, my colleague, is an expert in child welfare law, so if you have any questions related to the detail of the legislation, either as it's been proposed or amendments that you might be considering, he'd be prepared to give you some comments on that. I have extensive experience in service delivery in the child welfare sector and I'd be happy to do my best to answer any questions related to the service aspect of child welfare practice.

By way of introduction, the Ontario Association of Children's Aid Societies was incorporated in 1912. We

are a membership organization with this objective: we are the voice of child welfare in Ontario, dedicated to providing leadership for the achievement of excellence in the protection of children and in the promotion of their well-being within their families and their communities. The Ontario Association of Children's Aid Societies represents 50 of the 53 children's aid societies in Ontario.

Over the decades there have been an unsettling number of investigations and inquiries into situations where abuse of children has taken place within the setting of a public institution such as a correctional facility, a group home or a school.

The mandate of the children's aid society is to investigate allegations or evidence that children who are under the age of 16 or are in the care of the children's aid society or under its supervision may be in need of protection.

In June 2000, the board of the Ontario Association of Children's Aid Societies passed the following motion. They moved that the OACAS develop proposals with respect to reforming the Child and Family Services Act, which is the legislation that governs child welfare practice in Ontario, so that the statute provides specific authorization for children's aid societies to investigate incidents of institutional abuse, including the following things: the authority to communicate with an employer regarding the outcome of an investigation; the authority to interview other children or youth who might be affected by the maltreatment; and suitable remedies in the legislation to protect victims in non-familial settings.

You may have received prior information or had some discussion about whether the recent amendments to the Child and Family Services Act haven't already sufficiently addressed some of these shortcomings. While we think the recent amendments are significant, they still do not address some of the obstacles that are faced by children's aid societies in investigating complaints from children who are saying that they've been abused by a person who is not one of their parents.

In order to try to illustrate some of the obstacles that can be encountered, I'm going to tell you a story that is a wholly fictionalized description of the way in which these obstacles come up in day-to-day activities of the children's aid society. It's not based on any real information, but it's a composite picture of the kinds of activities that children's aid workers have to undertake and how the legislation either facilitates their investigation and their work with children or not.

I'd like to just give you an excerpt of a day in the life of a child protection worker. It's a typical day and a referral has been received from a very distraught parent who is concerned that her 12-year-old daughter, who is an aspiring competitive-level gymnast, has just disclosed that she has been suffering both physical and sexual abuse at the hands of her gymnastics coach. The child has been involved in receiving gymnastics instruction at an exclusive private gym in the community. This is a gym that promotes excellence in competition and has produced a number of Olympic-calibre competitors. The

gym coach has a very high standing in the community, is well-liked and in particular has won accolades for the accomplishments of some of his trainees.

The parents, who have listened attentively to the child's complaint and believe that she is telling the truth, immediately withdraw the child from gymnastics competition and from her membership in this particular gym. The children's aid society is involved to investigate the complaints of this child and they do this by conducting extensive interviews with the child and evaluating the story as she's telling it.

They take this information and request an interview with the gymnastics coach. He agrees to the interview but makes no admissions and, in fact, makes accusations that the girl is lying, that she is telling the story about alleged abuse because of concerns about her failing performance in the gymnastics club.

Were this a family member and were the child being abused by a family member, the children's aid society would at this point have to make a decision about whether the child had been abused or not and they could use the courts to assist them in intervening in a number of ways, including by removing the child from the care of the caregivers and placing the child in foster care. But since this child in question is not, under the current legislation, described as a child in need of protection, that is, she's no longer being exposed to the abuse of the gymnastics coach, the remedies that are usually available to the children's aid society don't apply in this particular case.

Perhaps the case would end there, except that another three children come forward with similar complaints about abuse at the hands of the same gymnastics coach. One of the complainants reports that she has actually witnessed the gymnastics coach sexually assaulting the first complainant. This young woman said she wasn't observed watching the abuse, but she failed to come forward out of concern about her own safety and that she would not be believed, that her word wouldn't be believed when compared with the word of the gymnastics coach, who everyone respects and admires.

It now appears to the children's aid society that there could be more victims, but the children's aid society is restrained in its powers in the following way: they are prevented via the legislation from sharing information about the allegations without the consent of both the victims and the accused person. I think it's easy to see that an accused person would not want to readily consent to the disclosure of this information. They also have no authority to inform the employer, the person who manages and runs the gym, of the allegations against the gym coach, nor do they have the authority to inform the employer of the outcome of any investigation that they might conduct. So even if they conclude that the gymnastics coach has in fact been abusing children, they have no power to release that information to the employer.

In this particular case, if they were able to share that information, they might find out the following: They might discover that the coach had worked at another gym

in another community. The gym had been run by the same company and the gym coach had faced complaints in that community as well. The employer had heard about the complaints but didn't believe them. So in order to save the reputation of the gym company and to safeguard the reputation of the gymnastics coach, he had been transferred to another community to resume his duties of coaching young women. The allegations at that point had also been denied by the gymnastics coach and the investigation had not resulted in any charges.

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If the children's aid society had been able to speak to the owners of the gym, they might also have discovered that no references had been checked when this particular person was hired, so there had been no verification of his suitability to work with children. Doing this might have uncovered that the employee had been dismissed from a prior job as a result of allegations that he had sexually abused young people.

Were the CAS able to disclose, without consent, the information regarding the complainants, they might be able to more readily locate and interview all the other students whom this gym coach was currently tutoring and ensure that they had neither suffered abuse at the hands of this particular person nor were at risk of suffering any abuse in the future. Finally, they might also have learned that an association that regulates the activities of coaches had received prior complaints about this particular coach.

The current legislation is unsuitable and inadequate at present to allow children's aid societies to do the kind of broad investigation that would be necessary to adequately ensure that people such as the hypothetical coach I've described to you do not continue in their abusive activities, that the organization for which the coach is working can receive some support in taking the necessary steps to ensure that good hiring decisions are made in the future and that there is a process in place for dealing with future complaints about employees who might come to the employer's attention. None of this is available in the current legislation, but we do believe that Bill 118 addresses some of these shortcomings.

In particular, the provisions of Bill 118 would assist children's aid societies in protecting children from institutional abuse by providing specific authority to investigate allegations or evidence that children in a caregiving institution who are under the age of 16 may be in need of protection by communicating the outcomes of a child protection investigation to employers when the employee's actions in the community or at work pose a threat to the safety of children who are under their care. It would permit children's aid societies to review records and interview other children in the care of the institutional caregiver. It would permit the children's aid society to provide guidance and support to caregiving institutions concerning procedures to follow in order that they could reduce risk to children and prevent future circumstances requiring the protection of children. It would also allow the children's aid society to institute remedies to protect children from abuse; for example,

restraining orders that do not allow a caregiver contact with a group of children, or directives to the organization that had employed the person to change some specific policies that may have contributed to the risk. Finally, it would allow children's aid societies to follow up in order to ensure that institutions have in fact implemented conditions that eliminate risk.

Those are our summary comments about the bill, which we do support. We would be happy to comment further or respond to questions you might have about our position.

The Chair: Thank you very much, Ms Moshenko. We have between six and seven minutes for questions. We'll start with you, Mrs Dombrowsky. Do you have any questions?

Mrs Dombrowsky: Not at this time.

The Chair: Mr Martin?

Mr Maves: Chair, if you will, and Mr Martin, I'll just make a quick motion. There are no more witnesses for the rest of the afternoon. Is that correct?

The Chair: That's correct.

Mr Maves: Could we perhaps agree by unanimous consent to have at least a total of 15 minutes of question time for the current witnesses?

The Chair: Would you like to recess around 1:30 or thereabouts?

Mr Maves: Yes. That way Mr Martin can take his time with his questions and I can take the time.

The Chair: Is there general agreement? That's fine.

Mr Martin: Could you comment for me, given the hypothetical situation you presented to us, how the need to tighten up the duty to report might come into play there?

Mr Marvin Bernstein: In terms of duty to report, there is certainly a provision in the legislation. That was one of the amendments to the Child and Family Services Act, which has heightened the reporting duty and has made it referable to the definition of "child in need of protection," so it catches risk considerations, not just actual harm. The reporting duty is a continuing duty. It's one that can't be delegated to other persons.

There is some case law which was decided recently by the Court of Appeal. It arose in the context of a case where an employer failed to report an injury to an employee to the Workplace Safety and Insurance Board within a three-day period, as prescribed by the governing legislation. In the particular case there was a question of whether or not there was a breach of the Provincial Offences Act, which sometimes has caused a problem around the failure to report where the prosecution hasn't taken place within six months from the commission of the offence. The Court of Appeal determined that duty was a continuing duty, and that duty continues either as long as the duty isn't complied with or to the point in time where the compliance occurs, and that's when the six months starts to run.

While the provision in the bill would seem to be perhaps a positive consideration in terms of ensuring that the duty to report would continue up until the point

where the risk comes to an end, or even potentially where the duty has been discharged, my own read on that is that the amendment to the Child and Family Services Act, which reinforces the fact that this is a continuing duty—it's not a one-time duty; it continues from day to day until the duty is complied with—coupled with some recent case law from the Court of Appeal level, would suggest that the protection is probably there already.

I think the important considerations, from our perspective, are to support the investigation powers of children's aid societies, to support the ability to disclose information to employers and heads of institutions and to enable societies in particular cases to initiate court applications. The duty to report certainly would provide some additional clarity, but I think that aspect of the bill is more marginal.

Mr Martin: Just to reinforce some of what you shared with us in terms of the hypothetical situation, again, and to maybe bring it a little closer to home in terms of the DeLuca affair in Sault Ste Marie, if a report is made to the children's aid society of a suspicion of child sexual abuse or physical abuse by a teacher in a school setting, and the children's aid investigates and finds that such abuse did occur and believes such abuse is likely to occur again, are there any interferences which would stand in the way of the CAS reporting to the school principal or school board the result of the investigation, its opinion as to future risk of reoccurrence, recommendations to alleviate the risk, and to secure a court order to force the school to take actions to alleviate the risk?

Ms Moshenko: Right now there is nothing explicit in the Child and Family Services Act that would permit that to happen without the written consent of the people who had been the subject of the investigation, so that would mean the parents, the child who was the victim and the perpetrator. I don't think it's hard to imagine that getting consent from all those parties can be very difficult, particularly a perpetrator who might feel that would incriminate him in other actions. I'm saying "him" because, unfortunately, most often these are male perpetrators and female victims. There would be no capacity, short of ignoring what is in the current statute and doing what was felt to be in the best interests of the child, but there would be no protection for the children's aid society in disclosing that information had they not obtained the appropriate consent.

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Mr Martin: So in the DeLuca case, for example, if the children's aid had been called in—and I'm led to believe they were not called in—short of getting Mr DeLuca's agreement to share that information, there really wouldn't have been much else they could have done.

Ms Moshenko: That's right.

Mr Maves: Mr Stewart also has a question. I'm going to try to leave him some time at the end of my questions. I want to start on the phrase "duty to report until the risk comes to an end," which is part of the proposal here.

How would you determine when the risk has come to an end?

Mr Bernstein: Normally there are certain tools that social workers will use in terms of looking at whether or not there's a specific risk. There's a risk assessment model; there are three different elements of the tool. Workers will carry out an initial evaluation and then will continue to review the results of their initial assessment, will go back. I think under the standards which are contained in regulations there is an obligation to go back and re-evaluate the level of risk. So they would do that according to the provisions in the legislation, according to the risk assessment tool they're using, in consultation with supervisors.

Mr Maves: As a teacher, I have a duty to come forward if I suspect some abuse. When I decide to come forward to the children's aid society and I report that abuse, to me, I've complied with the act; I've done my duty. But the children's aid society may be slow in investigating. Maybe they do a cursory investigation and think it's unfounded and do nothing. If I believe there's abuse and I point it out one day, and that teacher is still in the school and that student is still in the school the next day, do I have to call the CAS again?

Mr Bernstein: I think in that particular case the answer would be no. The duty is to report the information, the suspected need for protection, together with any information that supports the concerns. So if the social worker comes out and interviews the teacher and interviews the child, obtains the information and there isn't any new indicator, you don't see any further bruises, the child isn't providing additional disclosures, it seems to me that you've discharged your reporting duty.

Mr Maves: That's the only part that concerns me, that "risk comes to an end." As a layperson how do I know? I know there's an obligation on me to continue to report it. So I might report it and the risk hasn't come to an end, because the teacher's in the school and the kid's in the school, so I might want to report it on a daily basis until the teacher is removed or the kid is removed. There might be some confusion on the part of lay people to know when the risk has come to an end and how we might determine that. I think there might be some people with concerns about that aspect of it.

Mr Bernstein: If I could just respond, in the language of the current Child and Family Services Act—this is subsection 72(2), that establishes the ongoing duty—it is triggered when the person has "additional reasonable grounds." So there has to be something supplementary that comes to your attention. I don't think the obligation is such that the person has to keep making reminder calls to the children's aid society to exempt himself or herself from running afoul of the reporting duty. There has to be something additional; there has to be an additional concern, an additional bruise, the child comes forward with another disclosure.

Mr Maves: Right now, as it exists, if something makes me suspect abuse, I have a duty, an obligation, to report it?

Mr Bernstein: Correct.

Mr Maves: And that goes on forever, until I've reported it, right?

Mr Bernstein: That's correct.

Mr Maves: Even the case I talked about means I have that duty forever?

Mr Bernstein: Yes, but the duty is to report forthwith, to report immediately, so I think that's what the legislation contemplates, that this is going to be an immediate communication to a children's aid society.

Mr Maves: We all hope that does happen, but if it doesn't happen, I still have an ongoing obligation as long as I have that reason to suspect.

Mr Bernstein: That's right.

Mr Maves: In the gymnastics club example, one of the problems Mr Martin and I have talked about, and some of the people in Sault Ste Marie, is that when you start defining what a caregiving institution is or what a caregiver is, you run the risk of narrowing the scope of the definition and therefore leaving people or places out. As I look at the definition of "caregiving institution" in the bill, I have a fear, right off the top of my head, that a private institution, which is the gymnastics club, wouldn't be included in "caregiving institution." Any comment on that?

Ms Moshenko: That didn't occur to me. Marv might be able to comment on this more, but anyone who sort of stands in the place of a parent is a person who has temporary responsibility for children. My example was designed to illustrate just what types of people we might be referring to here. There are some traditional people we would think of—parents, grandparents, babysitters, daycare providers—but we're also talking about a broader range of individuals to whom you and I as parents turn our children over, and we entrust our children to these people in a parental way, even if it's for a limited period of time.

Mr Maves: But doesn't the way it's currently worded allow that? As soon as I take my kid to the gymnastics club, they're in the charge of that person; therefore, I can investigate that person. If I start saying in the act a caregiver is a teacher, a child care worker, a residential youth worker, I've run the risk of narrowing that scope and all of a sudden the gymnastics guy can say, "You can't investigate me," or, "I've got a private gymnastics club; you can't come in here and investigate us." I think the intention of the legislation back in 1999 was to have these things defined broadly enough that indeed these people would be covered.

Ms Moshenko: Exactly.

Mr Bernstein: I think the problem would be that if you made the definition of "institutional caregiver" exhaustive, then you'd run into that problem; you'd have a narrow list of categories. But I think one of the problems is that part III of the legislation is meant to deal with parents, caretakers, substitute caretakers and family members, and that's why the whole concept of institutional abuse doesn't quite fit into what the legislators contemplated.

Mr Maves: Just one last question before I turn it over to Mr Stewart. When you're doing an investigation, using your gymnastics example, don't some CASs right now inform school boards or other institutions that they've done an investigation of one of the teachers and about that investigation sort of on a need-to-know basis?

Ms Moshenko: I think sometimes there are circumstances where—in the case I gave you, the information got to the attention of the children's aid society through a parent, not through an employee of the gymnasium. Frequently when children disclose abuse they disclose it to a school teacher, so already the teacher has been privy to some information not released by the children's aid society but disclosed to them by the victim. So there is already some prescribed information.

I will tell you, though, that frequently children's aid societies run into difficulties in their day-to-day working relationships with schools and teachers because they are very constrained in terms of what else they can disclose without consent. For instance, if you're the teacher making the referral and I'm the social worker and I do an investigation, without consent, about all I can tell you is that I have completed an investigation and thank you for bringing this to my attention. If the parents and the victims are willing, there may be more opportunities for us to sit together and discuss the implications of the complaint and what we're going to do to assist the children on an ongoing basis, but it is not expressly allowed in the legislation. In fact, the standards accompanying the legislation say that consent must be obtained.

Mr Maves: In your example, if you were going to investigate that gymnastics teacher, you would go in and probably interview some of the people who work at that gymnastics club, you'd probably interview some of the parents and other kids at the gymnastics club. So, in effect, everyone around that would probably know that at least there's an investigation underway.

Ms Moshenko: No. In fact, in the example I gave you and under the current legislation, we would be able to interview the complainant, subsequent complainants and the alleged perpetrator. Without consent, there would not be any capacity to go to the employer or to speak to other children who had been students of that gymnastics instructor but had not made a complaint about abuse or neglect.

Mr Maves: I have more, Chair, but I'd better let Mr Stewart ask a quick question.

Mr R. Gary Stewart (Peterborough): Just two very quick questions. One is, will this legislation have any bearing on any court action that may be pending now against institutions? There certainly are a number out of the province and indeed there may be one in the province

still ongoing. Would this have any bearing on that? That's the number one question.

The other one is, when I look at your second bullet point, "Review records and interview other children under the care of the institutional caregiver," if I insert the word "teacher" and I insert the word "school" in that, I guess I have concerns about the fact that much of the review will possibly be done after. What I'm saying is that this legislation isn't strong enough. To me, that is after the fact, when the damage is probably done. We know what happens and I know you have to disclose and that's been one of the problems of the past. But if that doesn't happen, in a close-knit society if it's not on the record, it makes it pretty difficult to know what's going on. Then all of a sudden you're getting abuse and it's too late then.

Ms Moshenko: I'll respond to your second question and then I think Marv would probably be better to respond to your first. You're right, the Child and Family Services Act is a reactive piece of legislation. Investigations happen based on a complaint. There is also, though, a preventive component to that reactive response and that is, if intervention can be effective and we can address some of the underlying issues that led to the abuse, we can prevent people from abusing again. I agree with you that it's not the complete solution, but it has both a protective and a preventive component to it.

Mr Bernstein: In terms of the first point, my response would be that I don't see that as having any significant impact upon other proceedings. Oftentimes what happens in child protection cases is that there may be outstanding criminal proceedings, there may be outstanding civil litigation, and years ago typically what would happen is that those child protection proceedings would almost go into a hiatus state and the court wouldn't proceed. The case would be on adjournment until these criminal proceedings were disposed of. I think there's been a turnaround. More recently, courts hearing proceedings under the Child and Family Services Act will say that we've got to focus on the needs and the protection of these kids. There are protections that can be claimed under the charter, under the Canada Evidence Act, so that the evidence that's being introduced can't be used to incriminate that person in other proceedings, but you get on with the business of getting the evidence that you need and protecting those children who have been victimized. I think that's the approach that would be taken if these amendments were to be enacted.

The Chair: Thank you, Mr Bernstein and Ms Moshenko, for coming in this afternoon.

Meeting adjourned.

The committee adjourned at 1334.

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Mardi 20 février 2001

Standing committee on justice and social policy

Remedies for Organized
Crime and Other Unlawful
Activities Act, 2000

Comité permanent de la justice et des affaires sociales

Loi de 2000 sur les recours
pour crime organisé
et autres activités illégales



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICYCOMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Tuesday 20 February 2001

Mardi 20 février 2001

*The committee met at 1005 in room 151.*REMEDIES FOR ORGANIZED
CRIME AND OTHER UNLAWFUL
ACTIVITIES ACT, 2000LOI DE 2000 SUR LES RECOURS
POUR CRIME ORGANISÉ
ET AUTRES ACTIVITÉS ILLÉGALES

Consideration of Bill 155, An Act to provide civil remedies for organized crime and other unlawful activities / Projet de loi 155, Loi prévoyant des recours civils pour crime organisé et autres activités illégales.

The Chair (Ms Marilyn Mushinski): I'm going to call the meeting to order. There are members outside still but we are on a very tight schedule today.

STATEMENT BY THE MINISTER
AND RESPONSES

The Chair: Good morning, ladies and gentlemen. This is a meeting of the standing committee on justice and social policy to consider Bill 155, An Act to provide civil remedies for organized crime and other unlawful activities. We're going to start the day with the Honourable David Young, Attorney General. You have 10 minutes, Mr Young.

Hon David Young (Attorney General, minister responsible for native affairs): Thank you, Madam Chair. I do appreciate the opportunity to speak about the Remedies for Organized Crime and Other Unlawful Activities Act.

As most of you know, this bill was introduced by my predecessor, the Honourable Jim Flaherty, who did a great deal of groundwork on this bill when he was the Attorney General of this province.

Our government introduced this bill to protect Ontario's communities, to protect the people of Ontario, and to assist victims. The threat of unlawful activity to the security of the residents of this province can take many forms.

We are all aware of the violence alleged to be perpetrated by organized crime in other provinces and in other countries. What we don't tend to see and what we don't tend to hear about are the unseen harms caused by this kind of activity. Other jurisdictions acknowledge this

threat and other jurisdictions have moved to address it. In this province, we need a made-in-Ontario solution that will give us the means to fight unlawful activity effectively.

A great deal of research was conducted before the drafting of Bill 155. Experts on organized crime and civil asset forfeiture were consulted. These are experts that came from Ontario and elsewhere in Canada, as well as other jurisdictions, including the United States, Ireland and South Africa.

We learned that civil asset forfeiture works. As Detective Chief Superintendent Felix McKenna of Ireland's Criminal Assets Bureau told us, a significant number of high-level criminals left that country as a result of the bureau's efforts in this area.

Madam Chair, we have put forward a made-in-Ontario solution to take the profit out of crime. What we have done, plain and simple, is to clarify the law of property in Ontario. We have created another tool that can be exercised under our constitutional power of civil law.

I look forward to the input of this committee and I look forward to the input of the public. My hope is that the comments and advice that are provided over the next two days will help us to refine and strengthen this bill so that it can be an effective tool.

The aim of the proposed Remedies for Organized Crime and Other Unlawful Activities Act is to take the profit out of crime and to protect victims. Specifically, it would enable the province to ask the courts to freeze, seize and ultimately forfeit to the crown the proceeds of unlawful activity and instruments likely to be used in unlawful activity.

It would also allow the province to launch civil actions in court against two or more people who conspire to engage in unlawful activities, and it would create a special fund, a fund that would consist of the proceeds from civil forfeitures, from which people directly victimized by these unlawful activities could be compensated.

Unlawful activity is indiscriminate. It hurts every resident of this province and it hurts our economy. This bill would attack that activity and, more importantly, it would help victims.

Ontario is open for business, but not the business of organized crime.

We can't be naïve about this problem. Organized crime is picking the pockets of everyone in Ontario. A federal study estimated that organized economic crime

costs Ontario between \$5 billion and \$9 billion each and every year. To put that into perspective, that is roughly equivalent to the value of Canada's exports to Japan. As the most populous province in this country and the economic engine of this country, it is only reasonable to assume that Ontarians bear the largest share of the economic cost of that unlawful activity.

1010

Michel Auger, the courageous Quebec crime reporter who narrowly survived an attempt on his life last year, has said that organized criminals stay out of the United States and flock to Canada because of inefficient and ineffective laws in this country. While our proposed legislation is civil law, Ontario has also asked the federal government to do what it can in the criminal field. We have asked Ottawa to amend the Criminal Code to: broaden the definition of "criminal organization"; prohibit recruitment and participation in criminal organizations; and attach consequences to the wearing of badges and other manifestations of membership in criminal organizations. We'd like them to amend the Criminal Code to expand police powers to detain and search suspected members of criminal organizations and to establish a mandatory minimum sentence for organized criminal activity to help fight organized crime and biker gangs.

Our government believes that we have a responsibility to act in the best interests of the people of this province. It is clear that action can be taken against unlawful activity that falls under provincial jurisdiction. Ontario clearly needs new and innovative tools to fight unlawful activity and to help victims. Bill 155 is our government's response.

While the bill would give us more effective tools to fight unlawful activity, the rights of individuals have to be and will be protected. Safeguards to ensure due process and to protect the rights of people who legitimately and responsibly own their property are part of the bill.

The standard of proof that would be used in a civil forfeiture action would be the same as now exists for all civil cases: it will be the balance of probabilities. It would have to be proven in court that the property in question was a proceed of unlawful activity before it could be frozen, before it could be seized or before it could be forfeited.

I also want to stress that under this bill the burden of proof would remain with the province. The province would be required to prove its case in court. The burden of proof is not reversed. In addition, Bill 155 would also balance the privacy of personal information with the need of investigators to gather information for a civil asset forfeiture proceeding.

It has always been our commitment to protect the privacy rights of Ontarians. I'm pleased to say today that I am reaffirming our government's commitment to protect personal health information. We will propose an amendment that will clearly state that personal health information protected by Bill 159 cannot flow to the

Attorney General under Bill 155 in the absence of a court proceeding or a summons.

We continue to consult on privacy matters related to this bill. I've had an opportunity to speak to Dr Ann Cavoukian, the Information and Privacy Commissioner, and I will be meeting with her over the next short while. I look forward to her advice; I look forward to receiving the advice of this committee.

The court, under this proposed piece of legislation, would have different remedies available to it. For example, the court may choose to award damages equal to the losses experienced by the public, or it could issue an injunction to prevent future unlawful activity. This provision would provide the province with a powerful tool to prevent further victimization.

I think it's important to remember that our key objective through this legislation is to prevent further victimization where people are exposed. We want to ensure that victims will have an opportunity to be compensated for their loss.

The feature that makes this bill truly unique is the compensation fund for victims. If there is unclaimed money in the fund, participating police services, government ministries and others would be able to use that money to fund programs to help victims or to prevent further victimization.

In conclusion, our goal is to take the profit out of crime. And we'll help victims of unlawful activity if this bill is passed. We are developing a comprehensive organized crime strategy. We made a budget commitment last May of \$4 million for the strategic deployment of specialized police forces and dedicated legal resources to focus on organized crime. This funding was split between my ministry and that of the Solicitor General.

Ontario is committed to doing what it can under the provincial jurisdiction that it has. Bill 155 is one component of our strategy, and if it's passed, it would allow the province to establish a strike force of investigators, civil lawyers and forensic accountants. The strike force would enable us to achieve our goals without creating another level of bureaucracy.

Ladies and gentlemen, I'm proud that Ontario is the first jurisdiction in this country to develop a new approach that would stop further victimization and help existing victims. The Remedies for Organized Crime and Other Unlawful Activities Act, if passed, would disrupt and disable organizations that victimize Ontarians. I encourage all members to support this bill so that we can work together to make Ontario a safer place to live, a safer place to work and a safer place to do business.

I thank the members of the standing committee for their time today and I look forward to the discussions you'll have over the next two days on this very important piece of legislation.

The Chair: Thank you, Minister. We'll now turn to the official opposition for a 10-minute statement, with questions if there's time.

Mr Michael Bryant (St Paul's): Let me say at the outset that Dalton McGuinty and Ontario Liberals want

to provide law enforcement officials with effective and legal tools to crack down on organized crime. Ontario has lost billions of dollars to organized crime under Mike Harris's watch, so we need constructive measures to reverse this embarrassing trend.

The stated purpose of this bill was to make Ontario somehow not open for business to organized crime, yet in fact since the bill's introduction it would seem that organized crime has been flocking to the province. Biker gangs seem not to be shaking in their boots when faced with this paper tiger. I'm particularly concerned that the Harris government, instead of investing the necessary resources into enforcing the law already on the books, is engaging in another public relations stunt to fool Ontarians into thinking that they're doing something about organized crime. Even the National Post editorial board has trashed this bill as nothing more than, in their words, "a headline grabber."

We have a law that permits the seizure of mobsters' assets. We need to enforce the law on the books. Instead, what we're seeing today is the government trying to steer its resources away from the criminal courts and toward the civil courts, which are already totally overburdened. There is no reciprocal assistance to the civil courts that would deal with prosecutions through this new bill. But of course that would assume that the bill is actually going to have the necessary resources to be used.

And on that front we heard today, yet again, of a commitment to inject \$4 million, I believe it was, into police strike forces. Well, I've got news for the people of Ontario: this is another ruse. This is not new money; this is money that was first committed in the May 2000 budget. This is not new money; this is a reannouncement of money that was put in the budget nearly a year ago.

I'm concerned, furthermore, that the Harris government's approach to organized crime has involved conferences, pamphlets, several press conferences, and yet at the end of the day we don't have any investment in a real crackdown on organized crime. That's an enormous waste of taxpayers' money. The holding of a summit on organized crime in August 2000, after the Attorney General had attended four other summits on this issue, in Vancouver, New Jersey, Delaware and Washington—this bill might be renamed not the current title of the bill but rather "A Bill to Forfeit Taxpayers' Money for a PR Stunt."

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Lastly, I want to say something about the announcement that was made today. Of course, it goes without saying that amendments to bills at the committee stage are always welcome, but let's put this in context. The Attorney General of Ontario stood up in the House time and time again and lectured opposition MPPs that they had nothing to worry about with respect to the seizure of Ontarians' private health information by the Ministry of the Attorney General. "Don't worry; all is in hand with this bill," said the Attorney General. He had a briefing and thought that this briefing was going to somehow create a smokescreen that would fool everybody into

thinking that all was right with this bill. Yet, after all of that, after all of those cries of "Trust me, the bill is right," now we hear from the Ontario Attorney General, "Well, as a matter of fact, the bill wasn't right and you were right, Ontario Liberals, that it's wrong for Ontarians' private health information to be seized by the ministry without some element of due process hovering over it."

This is a major concession by this government, albeit it's not being brought in too late; it is before the bill is being passed. We're going to be taking a close look at this bill, looking forward to hearing from the submissions. I would just close by saying that I hope the legacy of Princeton's prince of paper tigers is not a series of bills which have no effect in this province. I look forward to Minister Young bringing forth an approach that doesn't just talk about crime but does something about organized crime in the province of Ontario.

The Chair: Thank you, Mr Bryant. You have a couple of minutes for questions, if you would like.

Interjection.

The Chair: OK, then we'll turn to Mr Kormos. You have 10 minutes.

Mr Peter Kormos (Niagara Centre): First, to Mr Young, congratulations. This is your first, I suppose, legislative function as Attorney General. I do wish you well during your term as Attorney General. Look, I'm not doubting the personal commitment of you or any other member of this assembly to want to confront criminal activity and cut it off at the knees. I have some concern with the partisan colouring of this and other so-called law-and-order initiatives.

Forgive me if I'm overly suspicious at times when I see your predecessor, the Solicitor General and the Premier, playing the law-and-order card in a very partisan way. Perhaps it's just my cynicism that drives me to see it as partisan-driven. Perhaps the people of Ontario look at it from a totally different perspective, a far more benign one. But I'm troubled. I've got to tell you, sir, I'm troubled when I see the law-and-order card, the fear-of-crime card, being played.

Having said that, nobody doubts the need to confront crime. You make note, as I heard you in your press conference this morning, about wanting to prohibit the wearing of badges, I suppose, insignia that presumes membership in some sort of criminal group or another. Some folks where I come from would think that blue pinstripe suits would fall into that same category. I trust you don't advocate abolishing those as well.

I've got some real concerns about the utilization of the civil test, the mere balance of probabilities. Again, I and New Democrats will support you or any other Attorney General in any effort to fight crime. Our concern—we hope we have a chance to address that during the course of this committee process—is that the civil test of balance of probabilities is such that it has the capacity to embrace or encompass people who aren't in fact criminals, whereas, as you know, in the criminal law the test is proof beyond a reasonable doubt. In fact you, and more importantly your predecessor, have talked about

how that's too high a standard, that's going to make it too hard. But, quite frankly, that test or that standard for criminal culpability is one that's a very important part of our whole social makeup and our history.

We have concern about the failure of the legislation to understand, when it speaks about relying upon convictions as—perhaps I've phrased this wrong—*prima facie* evidence, that there are places in the world outside Canada where the legal system does not have the same standard of proof, where people can be convicted of criminal convictions with sometimes the flimsiest and most capricious of evidence and, quite frankly, where the criminal courts are used as a means of political persecution.

I want very much to hear from you and witnesses who appear before this committee about the risk that's entailed with the reliance upon a conviction, be it in Canada or outside of Canada, in relying upon an outside-of-Canada conviction which may be based on a corrupt criminal justice system—"justice" would be oxymoronic in that regard—or upon a system where the criminal courts are used for political persecution, basically to get people or to force them out of the country or to punish them in a way that couldn't be effected through other means. I have real concerns about the impact of this in view of the incredible diversity of the Canadian population and the fact that people find refuge in Canada from some of the most oppressive and persecutorial regimes in the world, where I dare say yes, the criminal courts are used for the purpose of political persecution.

Real concerns about your comments this morning on health records: We haven't got the amendment; I trust it's forthcoming. We haven't got the briefing books yet; I'm sure those are forthcoming. Folks out there are incredibly concerned about the state getting the powers you described, and I want to hear more about summoning, because I was a little confused with this. You can say, "Well, of course you were," but I was a little confused about your use of the word "summons." Some of the press gallery asked you about that as well. You didn't have a chance to elaborate. You'll have a chance here, because I do want to hear about that.

The public is incredibly concerned about the prospect of the state, its police, its Ministry of the Solicitor General and its Ministry of the Attorney General accessing health care records. One would hope that this government, as any government, would be doing everything it could to ensure the integrity and security of health care records, rather than open them up to yet more opportunities. I, quite frankly, have concerns about the rationale you gave for that this morning. I'm not sure I buy it, but I'm prepared to listen. I'm prepared to listen carefully.

Niagara region, where I come from, is one of the regions—and I don't want to create the misimpression that somehow the Niagara region is rife with criminal activity or organized crime activity, but it's an area that's a border community, is part of the Golden Horseshoe—

that has certainly been impacted, as we read in the papers at least, by the inflow of biker gangs, among others.

I want to refer you to the struggle that the Niagara Regional Police force and, I believe, police forces across the province are having in a time when the downloading on to the municipalities is showing its colours, is having its impact: the incredible crisis the city of Toronto faces in terms of budgeting and similar crises down in Niagara region and, I trust, across the province. Policing is a labour-intensive activity. Good cops deserve decent pay—I have no quarrel with that—and good cops are prepared across this province, certainly in the Niagara region, to go out there and investigate, using all of the possible avenues, be it surveillance, be it following paper trails, be it infiltration, but they need the resources to do that.

It seems to me that the first line of attack, and, again, I know about the announcement that you reannounced this morning, because you referred to it from your last budget, leaving the impression—is it going to be announced again come April or May? Cops and police forces need the resources to conduct what can be very expensive, very time-consuming investigations. They're prepared to do it. I say they need the support of this government, because municipalities are cash-strapped, increasingly so. They need the support of this government to enable them to do that. Quite frankly, the numbers you spoke of may well not be adequate, and we haven't seen any sort of plan or strategy from this government about targeting particular criminal activities or particular areas in the province that may be hardest hit by criminal activities.

Similarly, the courts need the resources, crown attorneys offices and the court system in general, to handle what can become increasingly complex trials that last longer and longer, and to do it in a timely way. Earlier today, you talked about the huge time gap between investigation and prosecution. That should be of concern. Askov and Melo are not that distant in the past so as to be out of the realm of serious concern by you as Attorney General, sir.

1030

Do we support your efforts or anybody's efforts to suppress organized crime? You bet your boots we do. But are we going to support what amounts to your partisan grandstanding? Are we going to support what amounts to yet another announcement, trying to appear tough on law and order while all hell is breaking loose out there and families and individuals are being impacted by crime on a daily basis? Are we going to support an attack on the integrity of health care records? I think not, Mr Attorney General.

I'm eager to work with you in a spirit of co-operation and non-partisanship. I'm like that. I want our relationship—you, as the new Attorney General—to start off on a good, firm footing. But, please, focus your attention on the areas that are going to be most effective rather than the areas that are simply going to grab the biggest and best headlines.

The Chair: We'll now turn to presentations from the Ministry of the Attorney General. If you would like to come forward and give us your name, please. You have an hour. Hopefully, you will leave us some time for questions.

Mr Jeffrey Simser: I'll do my very best. We have 25 clauses.

My name is Jeffrey Simser. I am a lawyer with the Ministry of the Attorney General. This morning I am going to give you a very brief context for the bill. I'm going to take you through the basic architecture of the six parts of the bill and then I'll turn to the various clauses in the bill. I am mindful that this is a bill and not an act, and I will endeavour not to misspeak and assume otherwise in the course of my comments.

On August 2 and 3, the government held a summit entitled Taking the Profit Out of Crime: The Ontario Government's Summit on New Approaches to Fighting Organized Crime. Following that summit, the government issued a report entitled Lessons Learned, and among the recommendations of that report was one which suggested that Ontario could consider civil asset forfeiture as an option.

Bill 155, which is before this committee, is, without question, unique. It is the first of its kind in Canada. We did, however, learn from a number of other jurisdictions that are active in this area. The United States has had one form or another of civil asset forfeiture for over 200 years. Australia passed a number of civil asset forfeiture provisions starting in 1990, and a 1999 Australian Law Reform Commission report recommended an expansion in this area.

Following the deaths of a police officer and a journalist in 1996, the Irish government enacted civil proceeds-of-crime legislation. In 1998, South Africa passed a number of legislative proposals to address organized crime, including civil asset forfeiture. Finally, in June 2000, Prime Minister Blair endorsed a policy proposal in this area for the United Kingdom.

We move on now to the architecture of Bill 155. Bill 155 consists of six parts.

Part I is a purposes section. This section is designed to guide the courts and to help them understand the intent of the Legislature. The first purpose is to compensate victims. Bill 155 is unique in this respect: the proceeds of a Bill 155 action will be preserved and made available to the victims of unlawful activity giving rise to a proceeding.

The second purpose is essentially to regulate property. If someone has property that derives its origin in unlawful activity, Bill 155 states that they will be denied title to that property.

The third purpose is to protect public safety; that is, to prevent certain property from being used to engage in certain unlawful activities.

The final purpose is to prevent injury to the public that may arise from conspiracies to engage in unlawful activities.

Part II permits the Attorney General of Ontario to launch a civil proceeding in the Superior Court of Justice to seek an order to forfeit property to the crown in right of Ontario if the court finds that the property is the proceeds of unlawful activity.

I want to talk just very briefly about what that means and, more importantly, about what that does not mean.

All of the civil remedies in Bill 155 require court approval to be implemented. There are no police powers and there are no administrative seizure powers bestowed on the Attorney General or anyone else to seize or freeze or forfeit property. The court must approve every step.

Part III addresses instruments of unlawful activity. The Attorney General may launch a civil proceeding in the Superior Court of Justice to seek an order to forfeit property to the crown in right of Ontario if the court finds that the property is an instrument of unlawful activity.

Part IV creates civil remedies to address conspiracies. Bill 155 amends and extends the common law tort of conspiracy to make it available to the Attorney General, who can bring a proceeding in the public interest.

Part V of the bill deals with several matters, including proof of facts in a proceeding and the collection and disclosure of information.

Part VI of the bill makes amendments to the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

We now go to clause-by-clause analysis of the bill. There are 25 clauses in the bill, but I'm going to focus particularly on part II of the bill because, as you will see, a number of the provisions in parts III and IV replicate sections in part II. What I propose to do when I get to III and IV is only highlight the sections that are different.

Section 1, as I've noted, is the purposes section of the bill. If there is any ambiguity or uncertainty, we expect that the courts would make reference to this section in aid of interpretation of the bill. Section 1 says that the purpose of this act is to provide civil remedies that will assist in:

“(a) compensating persons who suffer pecuniary or non-pecuniary losses as a result of unlawful activities;

“(b) preventing persons who engage in unlawful activities and others from keeping property that was acquired as a result of unlawful activities;

“(c) preventing property from being used to engage in certain unlawful activities; and

“(d) preventing injury to the public that may result from conspiracies to engage in unlawful activities.”

Part II of the bill, as I've noted, deals with proceeds. We start with section 2, which has a number of definitions, the first of which is “legitimate owner.” This is a very important safeguard in the bill. As you'll see in subsection 3(3) of the bill, it allows someone to assert and requires the court to protect the interests of a legitimate owner of property. The definition reads:

“‘legitimate owner’ means, with respect to property that is proceeds of unlawful activity, a person who did

not, directly or indirectly, acquire the property as a result of unlawful activity committed by the person, and who,

“(a) was the rightful owner of the property before the unlawful activity occurred and was deprived of possession or control of the property by means of the unlawful activity,

“(b) acquired the property for fair value after the unlawful activity occurred and did not know and could not reasonably have known at the time of the acquisition that the property was proceeds of unlawful activity, or

“(c) acquired the property from a person mentioned in clause (a) or (b)” above.

Section 2 goes on to define “proceeds of unlawful activity.” It means “property acquired, directly or indirectly, in whole or in part, as a result of unlawful activity, whether the property was acquired before or after this part came into force, but does not include money paid under a contract to which section 2 of the Victims’ Right to Proceeds of Crime Act, 1994 applies.”

I would note for the committee that there is a different bill in the House, Bill 168, and if Bill 168 were to pass, it would replace the Victims’ Right to Proceeds of Crime Act. It has in it a consequential amendment, so it’s clear that this section applies there as well.

“Property,” as you will see, has a very broad definition. It means “real or personal property, and includes any interest in property.”

“‘Unlawful activity’ means an act or omission that,

“(a) is an offence under an act of Canada, Ontario or another province or territory of Canada, or

“(b) is an offence under an act of a jurisdiction outside Canada, if a similar act or omission would be an offence under an act of Canada or Ontario if it were committed in Ontario,

“whether the act or omission occurred before or after this part came into force.”

You’ll see with that definition that it carries through all of the three operative parts of this bill. The important thing is that if there is something that is an offshore offence, it must also be an offence in Ontario. If it’s not, there’s no right of action for us under this bill.

Subsection 3(1) is the heart of part II and it allows for a forfeiture order. It says:

“In a proceeding commenced by the Attorney General, the Superior Court of Justice shall, subject to subsection (3) and except where it would clearly not be in the interests of justice, make an order forfeiting property that is in Ontario to the crown in right of Ontario if the court finds that the property is proceeds of unlawful activity.”

Subsection 3(2) allows the proceeding to be commenced by action or application.

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Subsection 3(3), as I noted earlier, is the protection afforded to legitimate owners. It says, “If the court finds that property is proceeds of unlawful activity,” which is again a precondition for an action under this part, “and a party to the proceedings proves that he, she or it is a legitimate owner of the property, the court, except where it would clearly not be in the interests of justice, shall

make such order as it considers necessary to protect the legitimate owner’s interest in the property.”

So again, there’s no reverse onus here. Before anyone is required to assert a legitimate owner defence, the Attorney General must make its case before the Superior Court of Justice.

Subsection 3(4) gives the court flexibility to protect the interests of a legitimate owner. It states, “Without limiting the generality of subsection (3), an order made under subsection (3) may,

“(a) sever or partition any interest in the property or require any interest in the property to be sold or otherwise disposed of, to protect the legitimate owner’s interest in the property; or

“(b) provide that the crown in right of Ontario takes the property subject to the interest of the legitimate owner.”

Subsection (5) has a limitation period. It says, “A proceeding under this section shall not be commenced after the 15th anniversary of the date proceeds of unlawful activity were first acquired as a result of the unlawful activity that is alleged to have resulted in the acquisition of the property that is the subject of the proceeding.”

Section 4 deals with interlocutory orders that the court may make in advance of a final ruling under subsection 3(1). It states, “On a motion by the Attorney General in a proceeding or intended proceeding under section 3, the Superior Court of Justice may make any or all of the following interlocutory orders for the preservation of any property that is the subject of the proceeding.” You’ll see that the court has a range of orders, from intrusive to very unintrusive, that it may make, and the object of the order must be to preserve the property. The orders are:

“1. An order restraining the disposition of the property.

“2. An order for the possession, delivery or safe-keeping of the property.

“3. An order appointing a receiver or a receiver and manager for the property.

“4. An order giving the crown in right of Ontario a lien for an amount fixed by the court on the property or on other property specified in the order to secure performance of an obligation imposed by another order made under this subsection.

“5. An order that notice of the proceeding or of any order made under this subsection be registered in a land registry office against the property or any other property specified in the order.

“6. Any other order for the preservation of the property that the court considers just.”

Subsection 4(2) states, “Except where it would clearly not be in the interests of justice, the court shall make an order under subsection (1) for the preservation of the property if the court is satisfied that there are reasonable grounds to believe that the property is proceeds of unlawful activity.”

Subsection (3) allows that order to be made under subsection (1) without notice, but not for a period

exceeding 10 days. What you'll see with subsections (3), (4) and (5) is that those track the existing rules of civil procedure that exist now in the province for all litigation.

Subsection (4) does permit an extension: "If an order under subsection (1) is made on a motion without notice, a motion to extend the order may be made only on notice to every party affected by the order, unless the court is satisfied that because a party has been evading service or because there are other exceptional circumstances, the order ought to be extended without notice to the party."

So the general rule is that if there is an interlocutory proceeding and it goes *ex parte* without notice, it will be for a very short period.

Subsection (5) allows extension for a further period not exceeding 10 days.

Subsection 4(6)—perhaps I won't read all of these—makes technical amendments to make operative the possibility of a lien being ordered under subsection 4(1), paragraph 4.

Section 5 deals with legal expenses. It states, "Subject to regulations made under this act, a person who claims an interest in property that is subject to an interlocutory order made under section 4 may make a motion to the Superior Court of Justice for an order directing that reasonable legal expenses incurred by the person be paid out of the property."

Subsection 5(2) has some restrictions on the order:

"The court may make an order under subsection (1) only if it finds that,

"(a) the moving party has, in the motion,

"(i) disclosed all interests in property held by the moving party, and

"(ii) disclosed all other interests in property that, in the opinion of the court, other persons associated with the moving party should reasonably be expected to contribute to the payment of legal expenses;

"(b) the interests in property referred to in clause (a) that are not subject to the interlocutory order made under section 4 are not sufficient to cover the legal expenses sought in the motion."

Section 6 is rather technical but it's very important for the operation of this part and of the whole bill. The essence of section 6, if I may, in plain language, is that if there is a successful proceeding under Bill 155, rather than the proceeds of that proceeding going into the consolidated revenue fund—in other words, into the general revenues of the government—they will go into a special purpose account. They will be segregated and they will be made available for the purposes talked about in subsection (3).

Perhaps I'll just go there to focus on that. You'll see that "the Minister of Finance may make payments out of the account for the following purposes."

The first and most important is,

"1. To compensate persons who suffer pecuniary or non-pecuniary losses, including losses recoverable under part V of the Family Law Act, as a result of the unlawful activity."

Then,

"2. To assist victims of unlawful activities or to prevent unlawful activities that result in victimization.

"3. To compensate the crown in right of Ontario for pecuniary losses suffered as a result of the unlawful activity, including,

"i. expenses incurred in respect of any proceeding under this part that relates to the unlawful activity, and

"ii. expenses incurred in remedying the effects of the unlawful activity.

"4. To compensate a municipal corporation or public body that belongs to a class prescribed by the regulations made under this act for pecuniary losses that were suffered as a result of the unlawful activity and that are expenses incurred in remedying the effects of the unlawful activity.

"5. If, according to the criteria prescribed by the regulations made under this act, the amount of money in the account is more than is required for the purposes referred to in paragraphs 1 to 4, such other purposes as are prescribed by the regulations."

So now we'll go through the other parts. As I noted earlier, what I'm going to do is try and focus on the sections that are distinct, although I welcome questions if I've glossed over something that anyone isn't quite comfortable with.

Subsection 7(1), again, is definitions. The first defines what an "instrument of unlawful activity" is. It means "property that is likely to be used to engage in unlawful activity that, in turn, would be likely to or is intended to result in the acquisition of other property or in serious bodily harm to any person." So you'll see that instruments have a fairly limited definition here.

"Property" has the same definition.

You'll note on the owner defence that it's different here. Here we have a "responsible owner"; in part II we had a "legitimate owner." The reason for the difference is that we're dealing with very different kinds of potential proceedings here.

"Responsible owner" means, with respect to property that is an instrument of unlawful activity, a person with an interest in the property who has done all that can reasonably be done to prevent the property from being used to engage in unlawful activity, including,

"(a) promptly notifying appropriate law enforcement agencies whenever the person knows or ought to know that the property has been or is likely to be used to engage in unlawful activity, and

"(b) refusing or withdrawing any permission that the person has authority to give and that the person knows or ought to know has facilitated or is likely to facilitate the property being used to engage in unlawful activity."

"Unlawful activity" itself, again, is a very similar definition.

Subsection 7(2) is a different section; it doesn't appear in part II. Remember that in this part, everything must be forward-looking. We have to prove that it's likely to be used. What subsection 7(2) states is, "For the purpose of the definition of 'instrument of unlawful activity' in subsection (1), proof that property was used to engage in

unlawful activity that, in turn, resulted in the acquisition of other property or in serious bodily harm to any person is proof, in the absence of evidence to the contrary, that the property is likely to be used to be engaged in unlawful activity that, in turn, would be likely to result in the acquisition of other property or in serious bodily harm to any person."

Subsection 8(1) is the heart of this section, and it's similar to its counterpart in section 3. "In a proceeding commenced by the Attorney General, the Superior Court of Justice shall, subject to subsection (3)," which protects responsible owners, "and except where it would clearly not be in the interests of justice, make an order forfeiting property that is in Ontario to the crown in right of Ontario if the court finds that the property is an instrument of unlawful activity."

Again, subsections 8(2), (3) and (4) operate substantially in the same form as they did in section 3 earlier.

Subsection (5) is different, though. That says there is no limitation period. Every action under this part is prospective. We must show future use. So we did not feel that a limitation period had, in that context, any utility.

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Section 9, which deals with interlocutory orders, is the same as the approach taken in the previous part. I don't propose to go through it unless there are questions. We have precisely the same kinds of remedies that are there.

Section 10 deals with legal expenses in a similar way. Section 11 deals with the special purpose account in a similar way. The only thing I would note there is that if you want to qualify as a victim for compensation, the property must be of such a nature that it was used in the past, because that establishes the nexus to your claim.

Part IV deals with conspiracies that injure the public. This is a slightly different kind of drafting, because we're dealing with a different kind of proceeding. So section 12 has definitions. The first and very important definition is "injury to the public." That includes,

"(a) any unreasonable interference with the public's interest in the enjoyment of property,

"(b) any unreasonable interference with the public's interest in questions of health, safety, comfort or convenience, and

"(c) any expenses or increased expenses incurred by the public, including any expenses or increased expenses incurred by the crown in right of Ontario, a municipal corporation or a public body."

"Property" has the same definition. "Public," you may note, "includes any class of the public." "Unlawful activity" is defined as it was similarly in the previous sections.

The heart of this part is subsection 13(1), and it states,

"13(1) In a proceeding commenced by the Attorney General, the Superior Court of Justice may make any order that the court considers just if it finds that,

"(a) two or more persons conspired to engage in unlawful activity;

"(b) one or more of the parties to the conspiracy knew or ought to have known that the unlawful activity would be likely to result in injury to the public; and

"(c) injury to the public has resulted from or would be likely to result from the unlawful activity."

Again, these kinds of proceedings can be brought by action or application.

Subsection 13(3) is a little different. It has a special provision requiring that the Attorney General give notice of the proceeding, and I'll explain that in a minute in the context of subsection 13(5).

Subsection 13(4) defines the orders that a court may make. It says,

"(4) Without limiting the generality of subsection (1), an order made under subsection (1) may,

"(a) for the purpose of preventing or reducing the risk of injury to the public, require any person to do or refrain from doing anything specified in the order; or

"(b) require a party to the conspiracy referred to in clause (1)(a) to pay damages to the crown in right of Ontario for any injury to the public resulting from the unlawful activity."

Now, subsection 13(5) provides a slight wrinkle here. What this section 13 does is it amends and changes the commonlaw tort of conspiracy that exists now for private plaintiffs. So subsection 13(3) and subsection 13(5) were specifically designed in the architecture of this bill to deal with potential conflicts between a claim in a proceeding by the Attorney General on behalf of the public and a private litigant's claim. Subsection 13(5) says,

"(5) Despite subsections (1) and (4), no order shall be made requiring the payment of damages to the crown in right of Ontario if,

"(a) another person gives the court written notice that the other person claims a right to those damages and has commenced or intends to commence a separate proceeding seeking payment, by a defendant to the proceeding under this section, of those damages; and

"(b) the court is satisfied that the claim referred to in clause (a) is not frivolous or vexatious."

Subsection 13(6)—and this operates similar to a provision I talked about earlier—has a presumption of risk of injury to the public, and it states,

"(6) For the purpose of clause (4)(a), proof that, during the period that began five years before the day the proceeding was commenced, a defendant engaged in or conspired to engage in unlawful activity on at least two occasions and, in each case, injury to the public resulted from the unlawful activity, is proof, in the absence of evidence to the contrary, that similar unlawful activity would create a risk of injury to the public."

The limitation period is similar here to the one that was in part II, which is the 15th anniversary.

There are interlocutory orders. What you'll see here is that they're not listed in the same way that they were previously, but that's simply because we're dealing with a different kind of proceeding.

"14(1) On motion by the Attorney General in a proceeding or intended proceeding under section 13, the Superior Court of Justice may, for the purpose of preventing or reducing the risk of injury to the public, make such interlocutory order as the court considers just."

Subsection 14(2) applies subsection 13(5), as modified for this section. Subsection 14(3), again, allows *ex parte* orders—motions—to be made, and then we have a similar process as we did in the other two parts there.

The special purpose account: again, that is a very similar process, but you'll see that the first head is broader. It just says, "To assist victims of unlawful activities"—this is under subsection 14(3)—"or to prevent unlawful activities that result in victimization."

This takes us to the last two parts of the bill. Part V is a general part. Section 16 states, "Except as otherwise provided in this act, findings of fact in proceedings under this act shall be made on the balance of probabilities," which, as you know, is the civil balance of proof.

Section 17 is proof of offences. It says,

"17(1) In proceedings under this act, proof that a person was convicted, found guilty or found not criminally responsible on account of mental disorder in respect of an offence is proof that the person committed the offence."

Remember, here again unlawful activity, even if it's an offshore unlawful activity, must be a crime or unlawful activity in Ontario for any of this to apply.

Subsection 17(2) says,

"(2) In proceedings under this act, an offence may be found to have been committed even if,

"(a) no person has been charged with the offence; or

"(b) a person was charged with the offence but the charge was withdrawn or stayed or the person was acquitted of the charge."

Section 18 is designed specifically to deal with the issue of contraband. As you know, there are certain kinds of property that it is unlawful to possess, but we have in this bill legitimate owner and responsible owner defences, so we wanted to ensure that those defences couldn't be misused to make claim to possession of property where it wasn't lawful. It states,

"18. For the purposes of a proceeding under this act, a person cannot claim to have an interest in property if, under the law of Canada or Ontario, it is unlawful for the person to possess the property."

Section 19 deals with personal information. Subsection 19(1) states,

"The Attorney General may collect personal information for any of the following purposes:

"1. To determine whether a proceeding should be commenced under this act.

"2. To conduct a proceeding under this act.

"3. To enforce an order made under this act."

I would note, and I haven't noted to this point, that only the Attorney General may bring these actions. Even though the scope of unlawful activity is broad enough to pick up an act administered, say, by the Ministry of the Environment or the Ministry of Natural Resources, it is

only the Attorney General who may bring these actions, so we have to have a collection right in here.

Subsection 19(2) states,

"Manner of collection

"(2) Personal information may be collected under subsection (1) directly from the individual to whom the information relates or in any other manner."

Subsection 19(3) deals with "disclosure to assist in administration or enforcement of the law." It says,

"(3) The Attorney General shall disclose information collected under subsection (1) to a law enforcement agency or another person engaged in the administration or enforcement of the law if the Attorney General is of the opinion that the disclosure would assist in the administration or enforcement of the law, would be in the public interest and would not be contrary to the interests of justice."

Subsection 19(4) is an "obligation to disclose information" and it states,

"(4) A person who has knowledge of personal information or other information to which the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act applies and who acquired that knowledge in the circumstances prescribed by the regulations made under this act shall, despite those acts and despite any confidentiality provision of any other act, disclose the information to the Attorney General if the person believes that the disclosure would assist in,

"(a) determining whether a proceeding should be commenced under this act;

"(b) conducting a proceeding under this act; or

"(c) enforcing an order made under this act."

Subsection 19(5) provides for an exception and it states,

"(5) Subsection (4) does not require a person to disclose information if the person believes that the disclosure would unduly interfere with the administration or enforcement of any act of Canada..."

Subsection 19(6) really deals with a person who has disclosed information under subsection 19(4). Certain kinds of individuals may not be compellable in a civil proceeding, so this section states,

"(6) Despite any confidentiality provision of any act, a person who disclosed information under subsection (4) may be required to give evidence related to that information in a proceeding under this act."

Finally, subsection 19(7), and this is fairly important, says,

"(7) In this section,

"personal information" means personal information within the meaning of part III of the Freedom of Information and Protection of Privacy Act."

So the only kind of information subject to that regime, under section 19, is FIPPA personal information.

Section 20 deals with protection from liability. It states,

"20. No action or other proceeding may be commenced against the Attorney General, the crown in right

of Ontario or any person acting on behalf of, assisting or providing information to the Attorney General or the crown in right of Ontario in respect of the commencement or conduct in good faith of a proceeding under this act or in respect of the enforcement in good faith of an order made under this act."

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Section 21 deals with regulations and states,

"21(1) The Lieutenant Governor in Council may make regulations,

"(a) providing that orders under section 5 or 10"—that's the provision for legal expenses—"may only apply to legal expenses incurred for the purposes prescribed by the regulations and are subject to monetary limits prescribed by the regulations;

"(b) governing payments out of accounts referred to in section 6, 11 or 15, including governing the circumstances in which payments may be made, governing the amounts of payments, governing procedures for determining what payments are made and, in the case of payments under paragraph 1 of subsection 6(3) or paragraph 1 of subsection 11(3),

"(i) providing that payments be made only with the approval of the Criminal Injuries Compensation Board or another person or body specified in the regulations;"—so this is how the victims will claim—"and

"(ii) providing that a decision made under subclause (i) to approve or not approve a payment is final and not subject to appeal, and shall not be altered or set aside in an application for judicial review or in any other proceeding unless the decision is patently unreasonable," which applies the administrative law standard.

"(c) governing the giving of notice to the public of a proceeding under section 13," which is the conspiracy section, and the purpose of that notice is to make sure that potential private plaintiffs are aware.

"(d) prescribing circumstances for the purpose of subsection 19 (4)," which again is very important, that there will be regulations that refine and define how 19(4) is to operate.

"(e) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the purpose of this act."

Subsection (2) states,

"(2) A regulation made under subsection (1) may be general or particular in its application."

I'll now go to part VI, and specifically to section 22. Rather than read this, because it's a little confusing, I thought I'd just try and give a plain-language explanation.

Under the Freedom of Information and Protection of Privacy Act, a record must be disclosed unless FIPPA stipulates otherwise. Section 14 does provide an exemption for law enforcement which deals with policing investigations or inspections leading to a prosecution or to fines, but Bill 155 is not a bill that provides for law enforcement in any of these respects. The bill only applies civil remedies. It's not penal; it's remedial and it's compensatory. Further, given that this bill is directed at

organized crime, we were concerned that disclosing the fact of a record would tell organized crime a lot of information, ie, whether they are or are not under investigation. For that reason, we've established here that the Attorney General has the right to refuse to confirm or deny the existence of a record under Bill 155. That's 22(1).

Subsection 22(2) conforms the previous section with the requirements of FIPPA. Where there's a refusal to confirm or deny, the head must state (a) that the head refuses to confirm or deny the existence of a record; (b) the provisions of FIPPA on which the refusal is based; (c) the name and office of the person responsible for making the decision; and (d) that the person who made the request may appeal to the Information and Privacy Commissioner.

I believe the remaining sections in part VI are consequential to that for the most part, and they deal also with the Municipal Freedom of Information and Protection of Privacy Act.

Section 24 deals with commencements, as this act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Section 25 provides that the short title of this act is the Remedies for Organized Crime and Other Unlawful Activities Act.

The Chair: We still have about 20 or 25 minutes for questions, so I'll allow probably about eight minutes for each party.

Mr Bryant: Thank you very much for coming. I just want to talk to you about what the bill does, but I also want to clarify what the bill is not going to do.

There's going to be some question as to overlap, whether or not this in fact is trying to do indirectly what the provincial government can't do directly, so we're going to hear from presenters on violation of the charter and violation of division of powers.

Let's just talk about division of powers for a moment. I don't need to explain to you that obviously there can be some overlap between the code and provincial powers, but the province can't boldly go where they're not allowed to go.

What's the ministry's position as to how this could survive a division of powers challenge when there are already powers under the Criminal Code for the seizure of assets?

Mr Simser: I think the best way to answer that is to briefly go into my understanding of how the Criminal Code works, not in great detail, what it's intended to do, and then how this bill works and what it's intended to do. I would posit to you that they are very different things.

The Criminal Code has a number of forfeiture proceedings that can be brought under it. The two primary ones that are dealt with are criminal organization offences and drug offences. The forfeiture proceedings there are penalties that follow the conviction of someone.

The process generally is this: the police would lay a charge; the crown then lays a restraining order against the property; there is a prosecution of the individual. If, and

only if, the individual is convicted, then there is a forfeiture hearing that follows that as part of the penalty. It's separate from the sentencing of the individual but it is, in our view, part of the penalty. The Criminal Code is quite properly a penal sanction to activity.

Mr Bryant: I'm sorry to cut you off. I've only got about six minutes, so maybe I could just get right to the heart of my question.

A civil remedy, as I have always understood it, is something which repairs an injury to someone personally or to their property. A civil remedy is not a tool for enforcing a government scheme. How is this a civil remedy in that sense?

Mr Simser: With respect, I think that posits a civil remedy in a very narrow way. Certainly there are torts that are out there designed to repair and restore. You could talk about the conspiracy section as one that does that.

But one thing the civil courts do every single day is allocate disputes on rights of property. They do it every single day. If you've bought a house or if you have a house and there's an overlap between you and your neighbour, there is no injury per se necessarily there. They're not remedying an injury, but they are going to resolve the dispute on title to property.

This bill really talks about title to property. For example, in part II it says that if the provenance of property is unlawful activity, it denies title to the person who has the property. It has other provisions to protect legitimate owners, but the problem that creates at law is that that then creates a void.

If you say, "You can't own it," there's a void in law. The law doesn't like a void and the way the void is filled here is through the forfeiture process. The most important section here is that we will then take the proceeds of that unlawful activity and return it to victims. The purpose here from a civil law perspective is it's remedial and it's compensatory.

Mr Bryant: Thank you. One author said in 1998 in a national study that 80% of all money laundering cases have a foreign component. Does that sound about right? This bill doesn't address money that has a foreign component, because of course you couldn't enforce it in Ontario. Right?

Mr Simser: It depends. If the money is situated in Ontario—a typical money laundering is that the money is moved around.

Mr Bryant: Realistically, you'd park it somewhere else other than Ontario.

Mr Simser: If it's parked somewhere else other than in Ontario—

Mr Bryant: You can't get it.

Mr Simser: —we can't get it.

Mr Bryant: Fair enough. I just want everybody to understand the scope of it. There is nothing in this act that provides for a means to create the net worth profiles for the suspects.

Mr Simser: I'm sorry. I'm not sure I understand that question.

Mr Bryant: The mobsters—we need to find out what the assets are, how much money etc. This does it one at a time; in other words, one case, one piece of property at a time. Is that right?

Mr Simser: It's an in rem action so it does focus on property.

Mr Bryant: I know this is obvious, but the bill doesn't address the issue of resources in and of itself. In other words, the bill doesn't commit to an army of forensic accountants being brought in.

Mr Simser: No, the minister has made that commitment but it's not in the bill.

Mr Bryant: Right. The minister said today in the press conference that this bill isn't a panacea—fair enough—that it's a parallel process to the criminal provision.

Do I take it that the ministry is now going to move away from enforcing the Criminal Code with respect to the Criminal Code provisions on organized crime and instead devote its resources to this civil remedy once the bill is passed?

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Mr Simser: No. I'm not the expert on what the ministry may do and what the criminal law division will do, but my understanding is in fact they're beefing up their process rather than knocking it down. One of the problems is that the nature of things has changed and there's more work to go around than can be done in this area. But this bill doesn't change the priority. There are often going to be situations where you'll want to go through the Criminal Code process, it's appropriate to do so and you will do so, and this does not take away from that all.

The Chair: One minute, Mr Bryant.

Mr Bryant: You said something about beefing up. Leaving aside the issue of money allocation, because there's no new announcement today—the money is from the May 2000 budget—there's nothing in this bill that deals with transaction reporting by financial institutions.

Mr Simser: Which for the most part are federally regulated institutions.

Mr Bryant: Just to be clear, because this goes on the record, you shook your head; the answer was no.

Mr Simser: Right, thank you.

Mr Bryant: That's fine.

Also with respect to the sharing of information between police forces, because we talked about how this is a national and in fact an international issue, the bill doesn't address that information-sharing component, does it?

Mr Simser: No, the bill does not address that.

Mr Bryant: It looks like my time is up.

The Chair: Yes, your time is up. Mr Kormos, you have about eight minutes.

Mr Kormos: Part VI: run that past me again.

Mr Simser: Part VI?

Mr Kormos: Yes, the amendment to the Freedom of Information and Protection of Privacy Act.

Mr Simser: Right. What it says here is—

Mr Kormos: I've read it.

Mr Simser: I beg your pardon. This gives the ability for the head of whatever the enforcement arm is here to refuse to confirm or deny the existence of a record.

Mr Kormos: Give me an example.

Mr Simser: For example, there may be a proceeding against an outlaw motorcycle gang—I don't want to prejudge or—

Mr Kormos: Or me or any member of this Legislature.

Mr Simser: I was thinking specifically about something that is thought of perhaps as organized crime and perhaps under the conspiracy section. If that proceeding is in its formative stages, if we're looking at seeing whether we could convince a judge, we're worried about telling that particular organization that they may be a target of our activities. They're likely to know that if they're a target of our activities, that may impact on the policing side and there may be sensitive investigations. So that's why this provision is here.

Mr Kormos: I was reading some of the material Mr Fenson obtained for us—and my gratitude to him. He makes reference to a comment by the second circuit appeal courts in the United States with respect to the forfeiture legislation there, and the second circuit stated, "We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes." I appreciate that it's just an excerpt and it's an observation over the course of some 20-plus years of experience in the United States with forfeiture, but when I read that, you understand why my antennae go up, right?

Mr Simser: Yes. Do you know when that comment was made? Is there a date to it?

Mr Kormos: It's not cited.

Mr Simser: Just so you know, there's been a lot of controversy, especially at the federal level in the United States, and on April 25, 2000, President Clinton signed a bill called the Civil Asset Forfeiture Reform Act. It was the biggest reform in that area in 200 years and it substantively changed—Congress felt that there were problems and it dealt with it through that Civil Asset Forfeiture Reform Act.

Mr Kormos: For instance, you know when you refer to the bill that it includes part V, section 17: "An offence may be found to have been committed even if ... a person was charged with the offence but the charge was withdrawn or stayed or the person was acquitted of the charge." I could be charged with an offence and found not guilty by a court, yet your legislation permits the Attorney General to have a second kick at the can.

Mr Simser: The legislation doesn't deal with you, per se. There's not what I call an in personam—that's Latin—but it wouldn't be *Ontario v Mr Kormos*, if I may. It's an in rem action so it deals with the property itself. What the Attorney General must do is establish a nexus between the property—and let's say there's a part II allegation in a proceeding, so we're saying it's

proceeds. What the Attorney General must do is prove that that property and the unlawful activity are connected such that the provenance of the property is as the proceeds of unlawful activity. There's no provision in here to fine or convict anybody; it deals with the title to the property. There are all kinds of ways that you can assert defences to that allegation if it's proven, once it's proven, but only once it's proven.

Mr Kormos: Some of the report provided by Mr Fenson refers to—and this is the Clinton legislation you were speaking of—the issue of the need for reform and talks about the matter of burden of proof and the suggestion that the general civil standard of proof is too low a standard to assign to the government in this type of case, property forfeiture. Was that contemplated or considered in the drafting of this bill?

Mr Simser: Yes, it was. We looked very seriously at the issue.

Mr Kormos: So flesh that out.

Mr Simser: We looked very seriously at the standard of proof, but we felt at the end of the day that, at every stage, the court has to approve everything that goes on in terms of an action. We've added, if I may, to the standard of proof that where there's something that needs the standard of proof but is not clearly in the interests of justice, because that's in all of the operative sections that I went through, the court may refuse to make the order. So there is the civil standard of proof, and even if that balance of probability is met, the court has an inherent jurisdiction where it is clearly not in the interests of justice to make an order to refuse to make that order.

Mr Kormos: Mr Bryant referred, and so did you, to the Criminal Code. Is it section 430?

Mr Bryant: Show-off. Are you talking about 462?

Mr Kormos: It's 462.3. What's the policy in the province of Ontario, so far as you're aware? If you aren't, just—how is the crown attorneys' office approaching those sections in the Criminal Code? How many times have they been utilized? Are there investigative resources being put into enforcing 462.3 of the Criminal Code?

Mr Simser: I apologize. I'm not qualified to give you a proper answer to that question.

Mr Kormos: What's being contemplated? Who's going to conduct these actions under this legislation?

Mr Simser: I believe what the Attorney General has said is that he wants to create a specialized enforcement unit and it will consist of civil lawyers—obviously that will be the heart of it—it will consist of a forensic accounting capacity and it will consist of investigators, not police investigators but investigators in the traditional sense that most plaintiff lawyers use investigators, just to make sure that they establish all the facts of their case.

Mr Kormos: Are you aware of any drafting of guidelines or policy as to priorities for investigation and—I guess "prosecution" isn't the right word, is it?

Mr Simser: Under Bill 155?

Mr Kormos: Yes.

Mr Simser: We'll have to see whether the Legislature sees fit to pass it before we—

Mr Kormos: No, I didn't say that. I said, has there been any contemplation of what's going to be targeted?

Mr Simser: I don't think I'd be prepared to say. We certainly are trying to contemplate in the eventuality that the bill is passed, but I don't think we're as far as saying we're going to target telemarketing activity or prostitution activity or outlaw motorcycle gangs or anything like that. I don't think we're that far down the road yet.

The Chair: About one more minute, Mr Kormos.

Mr Kormos: You made reference to the foreign conviction issue. You looked at me because you were sort of saying, "That's the answer to your question." I wasn't talking about somebody convicted elsewhere of something that isn't a crime here; I was talking about somebody being convicted of, let's say, a theft in some other jurisdiction, which is a crime here, where that conviction was the course of a political persecution. Yet the conviction stands as proof, doesn't it, notwithstanding how it was obtained?

Mr Simser: It creates a presumption of proof, but if we're truly talking about a hypothetical fact situation where it truly is egregious, that the theft is really political persecution and the defendant can make that case, the court can always say that it's clearly not in the interests of justice in that circumstance to make an order under this bill and they can refuse to make the order.

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The Chair: Mr Tilson, you have eight minutes.

Mr David Tilson (Dufferin-Peel-Wellington-Grey): The paper prepared by Mr Fenson has been referred to, which was dated yesterday. I don't know whether you've had an opportunity to review that.

Mr Simser: No, I haven't.

Mr Tilson: I'm sure you haven't. It deals mainly with the proceeds-of-crime legislation in the United Kingdom and the United States. You mentioned the different jurisdictions that you, as a staff person involved in this legislation, have looked at. It's difficult to talk about that, because these are completely different types of jurisdictions, but having said that, can you tell us how you may have improved on those specific pieces of legislation, acknowledging how you've emphasized that this legislation we're putting forward isn't criminal legislation, that it has other intents?

Mr Simser: Absolutely. One of the challenges whenever you engage in something that's innovative and becomes the first of its kind in Canada is what you look to, to learn from. We started with the United States, primarily because it has the longest history in this area. They've been active with this area since 1789 and there's a long, long line of cases in the United States Supreme Court and at all of the circuit court levels to learn from. I believe there are at least 140 federal US statutes that deal with civil asset forfeiture. To my knowledge, virtually every state has a civil asset forfeiture provision of one kind or another, although, to be honest, we focused in detail on New York and New Jersey, simply because they

provided a nice comparative base for us to study. We not only went through their laws, but we met with their officials to talk about where they had problems and where they had successes. Mr Flaherty, the Attorney General as he was then, was quite committed to learning not only what worked but what didn't.

The United States is particularly challenging in some respects because it has had such a long history. We took great interest in looking at Australia, which has been active in this area since 1990, particularly New South Wales; the republic of Ireland, which has been active in this area since 1996; the republic of South Africa, which has been active in this area since 1998; and then there was the United Kingdom. They have not actually enacted laws that are similar to those that are in Bill 155, but in June 2000 Prime Minister Blair endorsed as a question of policy this approach. We understand that they're likely to look closely at, for example, the model in the republic of Ireland, and follow through. To my knowledge there is no legislation that has been introduced yet in the United Kingdom on this front.

Mr Tilson: I've had an opportunity to look at some of the criticisms of the legislation, much of which we'll hear in the hearings—constructive criticism, I would hope. One of the criticisms that comes forward is the fear that this legislation will go beyond organized crime, that it will deal with the average citizen. Some of it may have been referred to by members of the opposition, that this legislation will have an effect either by the investigation by the police authorities or indeed the applications that are made by the Attorney General. How can you assure the committee that this legislation won't do that?

Mr Simser: There are two parts to the question. One is, what is the scope of the legislation? I think the more important part, and the part I'd like to start with, if I may, are the safeguards that are in the legislation. There are numerous safeguards. Some of them are very technical. They're almost buried in the legislation, in the sense that a court may refuse to make an order where it's clearly not in the interests of justice. Other protections are much more up front, the first one being that every step here must be approved by the Attorney General and every proceeding must be brought by the Attorney General, and then it must be brought and approved by a court.

Coming back to your previous question, when you look at some of the problems, some of the bigger problems, for example, in the United States, have not been with judicially authorized actions in this area; they've been with administrative actions, where a police officer, for example, is empowered in certain circumstances to do what is in essence civil forfeiture, and take the property, then force you to prove that it was lawfully yours. We're not going there; we're not going down that route at all. That's the first thing.

The second thing is that organized crime in and of itself as a statutory matter is very difficult to define. This is something we learned particularly from the South Africans. They said that, as a matter of legislative drafting, it's a very difficult challenge to define that and yet

capture what you want to capture. So what we've done is we have focused on property and its connection to unlawful activity. That's the approach to drafting, if you will, that we've taken in this bill.

Mr Tilson: People in the legal community in particular have talked about, which the minister contradicted today, the topic of reverse onus. In other words, the onus is on the person who is being accused of having property that's going to be used for illegal activity. My understanding is that that reverse onus does not exist. Can you clarify that topic, anticipating what's going to be said in the hearings?

Mr Simser: Absolutely. There is no reverse onus in this bill. Before anything can come forward, the Attorney General must satisfy the court of its case.

There could be confusion in this area with some lawyers because in some American laws there is in fact a reverse onus, and some of them have been quite harsh in their application. We deliberately chose not to go down that route.

Now, there is a positive defence that you can assert either as a legitimate or a responsible owner, but that's not a reverse onus at all. The Attorney General must still make their full and fair case, and the court must be convinced of it, before you're ever required—and then, once the Attorney General has proven its case, you have the opportunity as part of your defence to assert a specific statutory defence that's in the bill.

The Chair: You've got one more minute, Mr Tilson.

Mr Tilson: The other criticism that seems to come forward, that has been in the media at least, is why in the world is the province of Ontario getting involved in this topic? In other words, it's the constitutional issue. It's been raised this morning, that this is something that is the exclusive jurisdiction of the federal government, and why is the province getting involved in this? Can you, in a nutshell, comment with respect to that criticism?

Mr Simser: Our view is that Bill 155 invokes the jurisdiction of the province over property and civil rights. In fact, I'd be interested to see whether the federal government could do this. I don't think so, because this is a civil right of action and it deals with title to property. That's one of the main components in here. The province regulates that in all sorts of ways. It deals with compensation for victims. Again, the province deals with that in all sorts of ways.

There are no penal provisions in the statute; there are no fines; there are no penalties; there are no convictions or charges laid under Bill 155. It is not a penal statute. It's remedial and it's compensatory. For that reason, we think it invokes our inherent jurisdiction in the province.

The Chair: Thank you very much, Mr Simser.

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair: We're now moving to public submissions. The first speakers are Mr Alan Borovoy, general counsel, and Stephen McCammon, associate counsel, of the

Canadian Civil Liberties Association. Good morning, gentlemen. You have 20 minutes.

Mr Alan Borovoy: I'd better start talking. Thank you very much. I'm Alan Borovoy, and on my left and your right, physically if not politically, is Stephen McCammon from our organization.

Since the federal Criminal Code already contains provisions very similar to the ones at issue here, there are of course some serious constitutional questions as to whether the province has the jurisdiction to enact the bill at issue. Since, however, the Canadian Civil Liberties Association does not have as part of its mandate to be concerned about the distribution of power between the federal and provincial jurisdictions, our submissions today will assume the constitutionality of this bill, at least for those purposes—charter purposes is another issue, but at least for those.

Having said that, quite apart from the constitutional matters, it is our view that there is very little in this bill that is worthy of enactment. Those few matters that arguably are worthy should be substantially amended.

1130

As a general proposition, it is acceptable to seize property that has been obtained through crime. It is even acceptable for the state to initiate procedures for such seizures. What is not acceptable, in our view, is, as between alleged perpetrators and alleged victims, for the power and resources of the state to be marshalled against one in favour of the other on the basis of a judgment made at the political level, and then for the state to have to do nothing more than prove its case on a balance of probabilities. This represents far too much weighting against the interests of the citizen who happens to be disfavoured by the state for whatever reason that citizen is disfavoured.

In our view, the prerequisite for such action against any of our citizens is a court finding beyond a reasonable doubt that a crime has been committed by an identifiable offender and that offender owns the property in question. Only a set of circumstances of that kind, in our view, would justify the kind of state-instigated procedures for seizing citizen property.

But then to go a little further into the bill, it talks about proceeds of unlawful activity. It defines "unlawful activity" as any offence against any federal or provincial statute. Do you really wish, for example, to be able to seize the profits of a merchant who stays open in violation of Sunday closing laws? This bill would enable you to do precisely that. In our view, there is no excuse for an overbroad definition of that kind. The definition of "unlawful activity" for these purposes should be confined to the most serious offences associated with organized crime and not just open it up to anything.

The second part of the bill deals with instruments of unlawful activity, property that is used in one way or another to facilitate the commission of certain crimes. Our view is that this section is fundamentally unfair.

We heard a few moments ago some talk about what an owner has to do in order to demonstrate that he's a

responsible owner. Consider the case, if you will, of some restaurateurs whose premises are being used for drug dealing. Now, they know it. The bill says they must notify the authorities as soon as they know or ought to know that these activities are occurring. Suppose these restaurateurs know very well that it's happening, but they're frightened, they are afraid to report. Do we then say that we are prepared to divest those people of their sources of income for reasons like that? I suggest that this is an obvious injustice.

But let me press it even further. Property very often serves many functions and many persons. In our view, there is something improper about rendering that property seizable simply because one of those persons may be an offender and one of those functions may be unlawful. After all, property that can be used this way can include an awful lot. It could include cars, homes, even clothes. I suppose it will take not very much imagination to conceive of some pretty absurd outcomes from trying to use this. As questionable as it may be to go after property in this way that has been used for unlawful activity, to go after it because it's likely to be used—now we're talking about the future and we're talking about getting evidence of future activity. This, I'm afraid, has the capacity to transform at least this part of this into impoverishment by clairvoyance.

I go to the third part of the bill, the part that deals with conspiracies that injure the public. Here the problem is the overbreadth and dubiousness of some of the remedies available. It says that a court may issue virtually any order in order to rectify. Then it goes on and, in trying to be more specific about it, it says, for the purpose of preventing or reducing the risk of injury to the public, a court may require anyone to do or refrain from doing anything. To what extent can this include ordering people not to do legal things as well as illegal things? The obvious example one thinks of is the next time there is an international trade conference in Ontario and we are concerned that some people may misbehave and that misbehaviour will injure the public. To what extent then may a court, on the application of the Attorney General, prohibit lawful demonstrations as an effective way of getting at potentially unlawful behaviour? In our view, this section should be limited, where court orders are concerned, to unlawful conduct and nothing beyond that.

Finally, on the issue of damages, you have a situation where damages can be awarded to the crown for injuries done to the public. In our legal system, we don't have much precedent for giving one party damages for injuries that are done to somebody else. Our legal system usually contemplates giving the damages directly to the injured parties. The problem here becomes, what kind of damages? What is the measure of damages? What are the criteria? Not a word. Could you have a situation where one party can be wiped out in order, presumably, to compensate for what has been done to another party? This doesn't make it clear how far it could go. At the very least, then, it is our view that there ought to be guidelines and criteria written into the bill for the

computation of damages if damages are to be awarded at all.

Just to summarize these recommendations, first, where it concerns the proceeds of unlawful activity, we suggest that a prerequisite be a finding by a court beyond a reasonable doubt that a crime has been committed by an identifiable party who owns the property. Less may be acceptable for purposes of temporarily freezing the property, pending the outcome of those proceedings, but that ought to be at least the prerequisite for the state going after people's property for such purposes in this way.

1140

Second, the definition of "unlawful activity" for these purposes should be confined to the most serious offences associated with organized crime.

Third, the part dealing with instruments of unlawful activity should be removed.

Fourth, the power to order people to do or not to do things should be focused on unlawful conduct only and there ought to be no damage provisions unless there are criteria and guidelines to indicate to a court what the appropriate measure of damages in these circumstances might be—all of which is, as always, Madam Chair, respectfully submitted.

The Chair: Thank you, Mr Borovoy. We have about eight minutes, maybe seven: two minutes each.

Mr Bryant: Do you want me to go first?

The Chair: Yes.

Mr Bryant: Mr Borovoy, thank you for coming, as ever. I wonder if you could just let us know, or maybe your colleague in justice could let us know, whether or not the past use of similar legislation in other jurisdictions has resulted in any injustices in those jurisdictions. I'm wondering, instead of the hypothetical of the merchant being harassed, about examples of where that's actually happened, or talk about the abuses of similar legislation in other jurisdictions.

Mr Borovoy: This issue has been a considerable controversy in the United States. The presentation made by our colleagues in the American Civil Liberties Union documents case after case after case of pretty awful injustices perpetrated under their counterpart to this legislation. As a consequence, there were bills on the table that would severely restrict the scope of the power at issue. We'd be pleased to send this on to you, if that would be helpful to you.

Mr Bryant: It would. Just so I understand, is it your position that in fact, arguably, section 8 of this bill is in violation of the charter?

Mr Borovoy: I think some of this could raise charter issues. As a result of recent decisions by the Supreme Court of Canada, I have become increasingly reluctant to make predictions about judicial behaviour. But suffice it to say that I think that there would be some serious charter arguments available under some parts of this bill.

Mr Kormos: The matter of the standard of proof, the balance of probabilities, the civil standard: it's my understanding from some of the material received that in the United States this has been of concern that the historical

civil standard, balance of probabilities, is too low a standard. The suggestion has been made that an intermediate standard between that civil standard and proof beyond a reasonable doubt, one of clear and convincing evidence, is more appropriate. Would you comment on that, please?

Mr Borovoy: I think, yes, clear and convincing would be a more appropriate standard than on a balance of probabilities. But remember that our recommendation that the prerequisite for moving ahead at all is basically a finding by a criminal court that beyond a reasonable doubt a crime has been committed by a discernible offender. So while I would agree with you that upping the standard that way is better than not upping it, I would suggest that the prerequisite for the state marshalling all of this against the citizen—I think what we have to remember about all this is not what a court ultimately has to decide, but what a citizen initially has to face, that is, that citizen faces the powers and the resources of the state, has to take on the state in this proceeding. The state simply then has to prove on a balance of probabilities.

That's what we say becomes, from our standpoint, the awful thing to face citizens with on the basis of no criteria at all that are in the bill. It's just the choice of the Attorney General to move against this one rather than that one. We say then that the prerequisite for that Attorney General judgment should be the finding of a criminal court. Then it's a different story.

Mr Tilson: Just on that point, because I must confess I'm not clear where you're looking. You were very critical of clause (b), in particular, of unlawful activity in section 2, which says that "unlawful activity" means an act or omission that ... is an offence under an act of a jurisdiction outside Canada, if a similar act or omission would be an offence under an act of Canada or Ontario...."

Mr Borovoy: I didn't address that one. I was addressing only the earlier part that dealt with an offence under a provincial or federal statute.

Mr Tilson: OK. Can you be clear as to what standard you support? I assume you support some standard.

Mr Borovoy: I'm not sure now what your question is.

Mr Tilson: The question is specifically on the balance of probabilities versus beyond a reasonable doubt or something in between, as was suggested by Mr Kormos. Can you be clear as to what you think the province should be doing?

Mr Borovoy: I could live with a balance of probabilities for civil seizure if the prerequisite were met, that is, a criminal court has already found beyond a reasonable doubt that a crime has been committed by an identifiable offender and that offender owns the property in question. Then you can go after him for that.

Mr Tilson: The problem is, of course, the province doesn't have the jurisdiction to get into criminal activity. The province has the capability of civil seizure.

Mr Borovoy: I'm sorry, that is not accurate, sir. The province enforces the criminal law and decides who they're going to go after in what kind of cases. Those

decisions are made at the provincial level. The feds decide what the criminal law shall provide, but the province administers and enforces the criminal law.

Mr Tilson: You gave some different types of provincial offences and criminal offences that may be unlawful activity. Breaking the law is breaking the law. That's what the province is concerned with: breaking the law is breaking the law. If I understand what you're saying—and this is what I'd like you to be clear on—are you saying that this legislation, if it's enacted, and of course, I get the impression you're skeptical whether it should be enacted at all, but if it is enacted, and I hope it is, quite frankly, are you suggesting that there be different categories of breaking the law?

Mr Borovoy: You bet.

Mr Tilson: What are they?

Mr Borovoy: I've already suggested that. If I'm not being too clear, forgive me. I thought my language was quite clear. I suggested that the definition of unlawful activity for purposes of seizing people's property should be confined to the most serious offences, that not every minor transgression should be able to lead the state to go after that person's property. I gave the specific example for those purposes of the merchant who sells some goods in violation of Sunday closing laws and I asked the question, "Do you really want to be able to seize whatever that person sold?" Yes, it's unlawful. Yes, a person would face a fine for that illegality. But how much more do you want to be able to do to him for something that really isn't all that serious? If you're interested in organized crime, then by all means use stuff like this for the serious things and not for those things.

The Chair: Mr Borovoy, thank you very much for coming.

We will recess for lunch and return at 1 o'clock. Please, gentlemen, try to be on time. Thank you.

The committee recessed from 1150 to 1301.

OFFICE FOR VICTIMS OF CRIME

The Chair: We'll get started. The first submission for this afternoon comes from Scott Newark, special counsel, Office for Victims of Crime. Mr Newark, good afternoon.

Mr Scott Newark: Good afternoon. Madame Chair, copies of our brief have been given to the clerk for distribution as well. I would like to thank the committee for the opportunity to come and make a presentation before the committee, this time on Bill 155.

Our office was invited to attend the organized crime summit, referred to earlier, in August. I actually have a semi-accidental background involved with organized crime as a prosecutor in Alberta dealing with bikers and then subsequently the Canadian Police Association on the criminal context of it.

The summit opened up areas in relation to civil forfeiture that this bill captures that I think are an important addition to what can be done in relation to not only organized crime but also property deprivation. Obvious-

ly, what the bill specifically does is provide a collection of civil remedies to deal with people, or an attempt to compensate people, who have had property taken from them as a result of unlawful activity. It does other things, but it does that specifically.

Our office was actually involved in some consultation with the ministry, with Mr Simser, specifically in relation to a couple of areas, which is what I'd like to focus on today, as opposed to the other areas that I know you will be discussing with other witnesses; about the importance of victim compensation, where possible; about dedicated funds that are created as the means of getting at specific revenues; and then finally, what you actually do with those revenues once you get them, or the means of distribution of those forfeited proceeds. I want to just very quickly, because I'm aware of the time constraints, go through some of those points and leave some time for questions.

Bill 155 obviously has a capacity to provide some compensation for people who suffer property loss, or other losses, as a result of unlawful activity. In that sense, obviously it's a welcome addition insofar as it's able to do that. I would also suggest to you that there is some real significance in the notion, the phrase that is used to describe some of this stuff about taking the profit out of crime. It's not just a snazzy title. It actually is a very sound strategy. Certainly in my experience that is particularly relevant when you are dealing with attempting to deter criminal conduct or anti-social conduct or unlawful conduct, that you're taking the means or the motive for which something is being done out of it.

As you know, the bill creates in effect what are dedicated funds. It's a very good idea generally to do that, in our experience. It's similar to what is contained in the Compensation for Victims of Crime Amendment Act or the Victims' Bill of Rights Amendment Act, so I included a copy of it as a tab in the brief so you can see a comparative kind of fund.

In section 6 of the bill, which actually lists the purposes for which the payments can be made, I would just make a couple of comments about that, and perhaps you may wish to pursue this with other witnesses as well.

It's a very good idea generally to have those kinds of specific purposes for which funds can be paid out, but I think what you want to do is take a look to make sure that there is the infrastructure and a commitment within administration to get the funds out the door, so that it lives up, if you will, to what the proper intentions and promises of the Legislature are in this stuff. I use, as the example of that, the equivalent fund, the victims' justice fund, which has not been able to do that. It has accumulated, as you know, a surplus, because the funds, although coming in and required to be spent on specific purposes, have not been getting out the door to where they should. So it's a good idea to do this, but I think you want to pay careful attention to the fact that we actually have the means by which we're going to be able to disburse the funds out to meet those goals set out in section 6.

In subsection 6(3), I also am not entirely sure what those funds are for, "to assist victims of unlawful activities." I am not exactly sure what that means in the context of what subsection (1) says. I presume that the rest of that section, "to prevent unlawful activities," essentially would be a vehicle by which you could fund, in effect, ongoing investigations necessary to do this, which is a very good idea.

I should also point out that it appears that the criteria about this, how you're going to actually be able to use this money and the specifics of how it goes out, appear to be something that will be contemplated in the regulations set in section 21. I, at least, don't have a copy of the regulations. I don't know whether or not they've been provided or drafted. My experience suggests that is something the legislative branch may well wish to have a good eye on, because frequently that is where the real essence of how you get to what it is that the legislation intends is actually met or not met. In a related subject, that was specifically the case in a federal statute called the Seized Property Management Act that set out a very laudable scheme, but when you actually got down to the regulations, the intent of how it was done was somewhat different than I think a lot of people actually had foreseen.

The second part of dealing with the notion of funds is who gets to make the decisions in relation to that and on what basis that's done. Again, that is to be established, pursuant to section 21, by the regulations, so I think you want to be alert to looking at exactly what they say.

I would make one comment in relation to that based on the experience that we've encountered so far. In subclause 21(1)(b)(i), there is a reference that it may be the Criminal Injuries Compensation Board that's involved in paying that out. I would add a word of caution to that. One of the most frequent comments we have from people around the province, either as crime victims or victims' service providers, is that there is a significant delay in being able to get what the Criminal Injuries Compensation Board does now in its mandate. So if we are going to add more things to it, you want to keep a close eye on that because there is already a delay about that.

Obviously the idea of an independent, or done by regulation—third party involvement in those kinds of decisions is quite important, but you want to make sure there is not something that causes undue delay or defeats the purpose of what is otherwise laudably intended in the bill.

I watched a little bit this morning, and I saw both Mr Borovoy and Mr Bryant make the point that what is contained in here has a property focus obviously, but this is not in any sense to be viewed as a replacement of Criminal Code enforcement. I would like to echo that. In particular, if we're dealing with attempting to compensate people who have lost property or suffered damages as a result of unlawful conduct, I would suggest, if that's part of the overall goal of this bill, something like enforcing is the administrative priority of fraud prosecutions or

credit card prosecutions or enforcing restitution orders; indeed, actually making that part of an existing victims' service. We might even spend some of the \$50 million, perhaps, on augmenting victims' services so that you can actually help people get the restitution orders that are already out there. That too would be, I would think, a laudable complement to this bill, using the organized crime provisions and the enterprise crime proceeds provisions contained in the Criminal Code. All of those things I think are subjects that need to be taken in combination if the intention is to follow up with this, at least insofar as the notion of compensating people who have suffered loss.

1310

I know there were some suggestions at a national level on this kind of approach about the wisdom of making sure that wherever possible you co-ordinate the approach of the enforcement and implementation of this so that you don't have different bodies doing that. I very much recommend that. It was something, to a certain extent, that we were involved in earlier, and that should include all of the components that would be involved in this so that people aren't operating in isolation and you know what is available and who's doing what.

The final point I'd like to make—and it's really just a housekeeping thing but it's something I think I'm probably right about. Subsection 14(2) of the act deals with the interlocutory orders. It says that subsection 13(5) applies. Unless I miss my guess, that's a misprint. I think that should probably be 13(6) that applies, so I think you may want to just—unless I'm wrong about that.

Mr Tilson: Subsection (2)?

Mr Newark: Yes, it's 14(2). I actually had a clue because it said, "Presumption of risk of injury to the public," which was the title on it. I think what it means to apply is subsection (6), because that is the presumption of risk in the interlocutory order. I think it's just a misprint.

Those are all of my submissions. This bill clearly has some content in it which would facilitate compensation of crime victims who've suffered loss as a result of unlawful activity and in that sense is a welcome addition.

Thank you very much. I'll attempt to answer any questions anybody has.

The Chair: Thank you, Mr Newark. We have about three minutes from each member, starting with Mr Kormos.

Mr Kormos: No, thank you.

The Chair: No? Mr Tilson.

Mr Tilson: I think it's appropriate that you be here today because obviously one of the main purposes of the legislation, if not the main purpose, is to help compensate victims of crime for losses that have been sustained as a result of unlawful activity.

You made some comments with respect to section 21—

Mr Newark: Regulations.

Mr Tilson: Sorry, the regulations, and specifically the comment about approval being given by the Criminal

Injuries Compensation Board. You raised a caution that you were concerned, from experience in dealing with that board, that there might be delays in getting monies out. If you didn't use that vehicle, is there another vehicle that you would recommend?

Mr Newark: I'd actually probably include somebody from that board or individuals off of that board and some of the other players that are involved in the system that are contemplated in section 6, the different parties that would be involved.

There's nothing in the act and we don't know the regs yet to see how you're going to balance the priorities of payment, so I think what I would probably do is approach it from the basis of having some kind of subject knowledge, in other words, some relevance, about the purpose of the payment and some notion of independence or arm's length so that you don't have, just to use the example, a police service that would have a direct benefit from having the dollars paid that way.

To a certain extent you'll probably be able to get at some of that by the priorities you set out in the regulations as to—I don't know if that's contemplated—who takes first charge or something like that, as opposed to assigning it formally to a body that already has a very heavy caseload.

Mr Tilson: Mr Borovoy raised some comments this morning. You indicated you'd heard him with respect to the tests, the debate whether it should be beyond a reasonable doubt, on the balance of probabilities, or something in between. You're a lawyer?

Mr Newark: Yes.

Mr Tilson: Do you have any comments on those remarks?

Mr Newark: Sure. It's a in rem proceeding; it's a property-related proceeding. Frankly, I did listen to some of what Mr Borovoy had to say and I must admit that if you went down some of the road that he was attempting to suggest it should go, that would take you into criminal jurisdiction. Frankly, I think this has been very carefully drafted so that it confines its applicability to areas over which the province has jurisdiction. It doesn't matter whether or not, in my opinion—if there's a deficiency, for example, as I think there is in the federal legislation, that doesn't open up automatically a hole that the province can jump into. The province can only act appropriately within its own jurisdiction.

So I don't agree with his conclusions about changing the standard. The standard is appropriate when you're dealing specifically with a property focus. That's a significant difference, obviously, from what the Criminal Code provisions are about, where it's targeted to a specific individual, with specific property linked directly to that. So I would say there has obviously been some fairly careful analysis of this, and it seems to me they're on the absolutely correct track about keeping it very carefully defined and defensible, ultimately, in court.

The Chair: Mr Bryant.

Mr Bryant: Thank you for coming, and thank you very much for these written submissions. Maybe you can

explain, as a former prosecutor, why it's necessary for this government to make a significant investment in terms of investigative resources, an army of forensic accountants, because as I understand it, in order to execute these tools it's enormously complicated; it's not a simple matter. Can you explain why that is?

Mr Newark: Not really, is the short answer. I've never been involved in any organized crime prosecutions in relation to assets. Mine have been more about dealing in bike gangs, specifically in relation to some of their activities. It wasn't directed at property.

I think your general statement is correct, though, that it's recognized as being a complicated, precise process that generally requires, as you put it, the army of forensic accountants. I think that's probably the reason why.

Mr Bryant: So if we don't get the regulations, if we don't get the army of forensic accountants, if we don't get all the resources necessary that have been called for by this committee, then in fact the purposes of this bill are not going to be fulfilled.

Mr Newark: I don't think that's unique to this bill. We've spoken before about that, where passing legislation is one part of the exercise; the other part of the exercise is making sure that when you do that, you anticipate and plan for what's necessary to put into effect the laudable ideas that you've got here. From the care that has been taken with this legislation, I think people have figured that out, in my sense.

Mr Bryant: I didn't understand something in section 6 of your submission, conspiracies that injure the public. In the last paragraph you said, "Of interest, the directed expenditures do not include compensation for victims of the unlawful activity." Can you explain that?

Mr Newark: If you look at the—

Mr Bryant: Let me put it this way: do you have any concerns there?

Mr Newark: No, because I think it's covered off in the legislation as to why that is the way it is.

Mr Bryant: I think this was raised in the question by Mr Tilson, but in order to achieve the independence desirable, ideally, how would we do that, addressing recommendation 7?

Mr Newark: I'm sorry. Do you mean the people essentially making the decisions about what happens with the money?

Mr Bryant: Sorry. I wasn't very clear. Under subsection 21(1), I guess the Criminal Injuries Compensation Board is going to be used. They're already totally overburdened, yet at the same time we want to have some arm's length mechanism in order to get the money to the victims. What's the best way to keep the independence but at the same time execute the purposes of the bill?

Mr Newark: Traditionally the institution that has an interest in receipt of the funds is not specifically and exclusively involved in making the decision, so I'd involve the parties there. Subsection 21(1)(b)(i) only mentions the CICB as a possibility; it doesn't say that it's going to be the CICB. To reiterate, frankly I would think

you would include crowns, police officers; I'm anticipating there's going to be some kind of a coordinated unit involved in this stuff; our office is there with a mandate in a similar kind of thing. Those kinds of people, probably acting in concert, are better, I would think, than just the ministry staff involved in it or any specific agency in effect making decisions about potentially their own funding.

Mr Bryant: Back to resources: in addition to investing and executing it in terms of the law enforcement side, would you agree that in order for this bill to work, the civil courts themselves are going to need some assistance. Because now they're going to get all kinds of new remedies which they're going to have to deal with, and the civil courts, as you know, are totally overburdened right now.

Mr Newark: Logic does tell you that if you're going to add what is in effect a new process or application, there has to be some recognition that it may take some time.

Mr Bryant: What involvement do you think your office ought to have in perhaps ensuring, in terms of monitoring or otherwise, that the purposes of this bill are fulfilled?

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Mr Newark: During the consultations, we offered to participate in the kind of panel that's contemplated in section 21 in the regulations. I spoke, actually, with the chair this morning, and it's something that we would very much like to be involved in. We're doing that already on other things specifically related to victims out of the victim justice fund. It would seem logical that if you're dealing with a fund that has that kind of purpose, an office like ours, with the mandate that it has, would logically be involved in it. So just specifically that? Yes, we'd very much like to be involved.

Mr Bryant: A last question?

The Chair: Yes.

Mr Bryant: Just so I'm clear on this, the office in fact supports the ministry's vigorously pursuing the Criminal Code remedies, and this bill does not in any way signal an abandonment of that. Is that right?

Mr Newark: Yes, I've not sensed that in any fashion whatsoever.

Mr Bryant: What does the office want?

Mr Newark: Enforcement of all the tools available in the tool chest, one of which I think is a new one right here, but not abandonment of it by any stretch of the imagination. It's why I included specifically that it might be nice if we used some of the funds currently available out of the victim justice fund to actually get the victim standard in place that included an obligation to help victims enforce restitution orders, which is not done now.

Mr Bryant: A \$50-million surplus? David, you're going to be busy. Mr Tilson is going to be busy.

The Chair: Thank you very much for coming.

Mr Newark: Thank you.

HILLEL GUDES

ANDY RÉTI

The Chair: The next presenter is Hillel Gudes.

Mr Hillel Gudes: Good afternoon, Madam Chair. My name is Hillel Gudes. My friend here, Mr Andy Réti, will speak on my behalf.

The Chair: Oh, yes. Sorry, Mr Réti; I didn't recognize you.

Mr Andy Réti: Madam Chair and committee members, just like the previous speaker, we appreciate the opportunity to address you. We have also distributed copies of our brief.

As a brief introduction, please bear in mind that both of us are naturalized or, as you can tell, accented new Canadians, and very proud of it, I might add—ordinary little people. In fact, we're in the taxicab business. The purpose of our submission is to alert the distinguished members of this committee to the dangers of some aspects of Bill 155 in its present format. We will attempt to do so by highlighting the sections that we feel should be revisited, as well as some general comments.

You understand we are not lawyers, and if because of that we misunderstood or misinterpreted something in this proposed bill, we apologize.

We would like to make it clear from the onset that we are not against fighting organized crime. We are not speaking in defence of organized crime, but rather in defence of democracy. There is, however, a fine line between passing laws to fight crime, and subverting, however remotely, democracy.

Please allow me to make a personal comment, which is not in the deputation. I am a child Holocaust survivor. I am a Holocaust educator and I volunteer at the Holocaust Centre here in Toronto. In each of my presentations, I make sure that I address the students and the visitors with the following: if there was one lesson of the Holocaust, it was to speak up when you see something wrong. So please allow me to practise what I teach.

Hitler rose to power by democratic means. Once in power, he started by passing the infamous Nuremberg laws that led to the establishment of a police state, which enabled him eventually to do all those horrible things. By no means are we suggesting any comparison, God forbid; but we are trying to make a point by way of a historical fact. Our feeling, based on personal experience, is that if we have to choose between limiting democracy and living with organized crime, however reluctantly, we should choose the latter.

There is no doubt in our mind that there are good intentions behind the introduction of Bill 155. However, it is our opinion that it gives too much power to the government or the police. Therefore, it is incumbent on you, our duly elected legislators, to amend this bill to ensure that it protects all citizens from possible abuse by any government or the police. It seems to us that Bill 155, in its present format, could be used to fight more than organized crime.

The following are several examples of what concerns us. On page 5, under part III, subsection 7(1) defines "property" as "real or personal property, and includes any interest in property." That definition is so broad that it probably includes everything under the sun.

Subsection 7(1) on page 6 defines "unlawful activity" as "an act or omission that, is an offence under any act of Canada, Ontario or another province or territory of Canada." Again, we are concerned as to the broad scope of this bill.

We are concerned as to the standard of proof proposed in this bill as stipulated under part V on page 12, section 16. "Except as otherwise provided in this act, findings of fact in proceedings under this act shall be made on the balance of probabilities." This is, of course, is versus or opposed to "beyond reasonable doubt."

We are also concerned about subsection 17 (2), which states:

"In proceedings under this act, an offence may be found to have been committed even if,

"(a) no person has been charged with the offence; or

"(b) a person was charged with the offence but the charge was withdrawn or stayed or the person was acquitted of the charge." What happened to the idea of innocent until proven guilty?

We are also concerned about section 20 on page 14, which states, "No action or other proceeding may be commenced against the Attorney General, the crown in right of Ontario or any person acting on behalf of, assisting or providing information to the Attorney General or the crown in right of Ontario in respect of the commencement or conduct in good faith of a proceeding under this act or in respect of the enforcement in good faith of an order made under this act." Who is going to be accountable if this bill is used in an abusive manner?

We are also concerned about subsection 9(3) on page 7, which states, "An order under subsection (1)"—which is an order for the preservation of any property forfeited—"may be made on motion without notice for a period not exceeding 10 days." Are we not going to give the accused a chance to put up a defense?

To illustrate our concerns, please consider the following scenario: A homeless person rode his old bicycle to the supermarket. He left it outside, walked inside and eventually stole an apple. All along a policeman was watching him. When he tried to climb on his bicycle to run away, the policeman arrested him. He was charged with shoplifting but eventually was acquitted. Yet the crown asked the court for an order confiscating the bicycle. Is this a reasonable reflection of Bill 155? Or to put it in our background, the taxicab business, currently—and we are both Toronto cabbies—there are hundreds, if not thousands of illegal, unlicensed cabs coming into Toronto. Are you going to confiscate their vehicles for being in Toronto without a licence? Think about it. Is that really the meaning or spirit of this proposed bill?

We urge the committee members to have a strong, serious look at this bill. Please take our concerns

seriously. Please make sure that amendments will be made to this bill in order to protect the average citizen and to preserve and protect democracy. Let us preserve the principle of innocent until proven guilty and the principle of proportionate penalty. Do not take the word of the Attorney General that this bill is good as it is and should not be amended, nor believe that there is enough protection in it for the average citizen. Right now there is not enough such protection from overzealous police or an overzealous Attorney General.

Again, I might add that we have been in this building trying to enlist your support against the autocratic former Metro Licensing Commission, and if you have the next two days, I could give you some stories, but we don't.

It is up to you, our elected members of provincial Parliament, to stand on guard and to ensure that democracy will not be subverted, however well-intentioned this bill is meant to be.

The Chair: Thank you, Mr Réti and Mr Gudes. Unfortunately, we don't have time for questions because, as individuals, you only had 10 minutes. Thanks very much.

The next presenter is Malcolm Cairnduff. Mr Cairnduff? Is Karen Selick here? Daniel Mader?

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FREEDOM PARTY OF ONTARIO

The Chair: I understand Mr McKeever of the Freedom Party of Ontario is here. Would you mind making a presentation now?

Mr Paul McKeever: No, that's fine.

The Chair: Thank you. You have 20 minutes.

Mr McKeever: Yes, and I've brought 30 copies of my presentation, as per the request. I should just add that I spoke with Ms Selick a few days ago and she did intend to be here. She planned to be taking the train in.

The Chair: I called her name. It's a little early for her. The only reason I called her name is because the next presenter is not here. We'll hear from you and then go back to see if she comes.

Mr McKeever: Sure. My name is Paul McKeever. I'm a lawyer in practice in both Toronto and Oshawa in employment law. I'm here as a member of the Freedom Party executive to make submissions on behalf of the party.

The Freedom Party of Ontario is a political party registered pursuant to the Elections Act. The Freedom Party's statement of principle is that every individual, in the peaceful pursuit of personal fulfilment, has an absolute right to his or her own life, liberty and property. The Freedom Party is in favour of laws that discourage the initiation of coercive physical force by any person against any other person, of the use of coercive physical force only in response to and as a consequence of the coercive use of physical force. Examples include laws that punish a person for stealing a person's property or causing physical injury to a person without their consent.

The Freedom Party strongly objects to Bill 155 in its current form. Some of the Freedom Party's objections are philosophical and some are legal, and they are set out in the following pages.

First, the philosophical objections: in considering the philosophical objections listed below, it's important to keep in mind that were it made law, Bill 155 would essentially allow a person to be punished without having committed any offence except the one which, as explained below, is actually implied by Bill 155 itself: the simple possession of property. In short, rather than being a response to the initiation of coercive physical force, Bill 155 would promote and legalize the initiation of coercive physical force. It would promote and legalize the commission of an immoral activity.

For hundreds of years, our legal system has recognized that every person has unalienable rights of life, liberty and property. Indeed, our criminal laws are designed primarily to protect those rights. Property in this context has not its formal legal meaning but its informal meaning: property refers to money and other goods, as opposed to services. Some people, including some Freedom Party members, believe these rights are God-given. Others believe that they are the result of utilitarian or objectivist philosophies. But one thing is certain: in our society, the protection of the right to one's property is necessary if a person is both to survive and to thrive. Indeed, the right of life is meaningless in our society if it does not imply or otherwise include the rights of property. As will be discussed below, under the "Legal Objections" section, it is our submission that Bill 155, were it made law, would violate the right of persons to their property.

The Freedom Party disagrees fundamentally with the notion that the moral righteousness or wrongfulness of taking another person's property by the use of coercive physical force depends upon who is so abusing physical force. Theft is theft, no matter who may be the thief. It is morally wrong for B to steal from C, whether B is Her Majesty the Queen, one of her ministers or simply one of the Queen's subjects. Moreover, it is no more defensible to commit a theft indirectly, or via an agent, than it is to commit a theft oneself. It is never morally defensible for person A to have person B steal person C's money for person A's benefit. That B may be Her Majesty or one of her ministers, acting on the advice of A's and C's elected representatives, does not somehow make the theft morally righteous.

The Freedom Party submits that it matters not to what purpose Her Majesty or her finance minister would put the property taken under Bill 155. A theft cannot be morally excused or justified by the thief's decision to use his booty for noble causes. Were a mugger to steal from one person in a dark alley but to subsequently give the stolen money to victims of crime, or to the police so as to prevent muggings, such expenditures could not negate the fact that the mugger's theft was morally wrong. Nor could the mugger's theft be made morally righteous by the fact that she, while mugging a person in a dark alley,

held the title of Queen or finance minister, and, most certainly, the immorality of such a theft could not be negated were the mugging to occur in a well-lit courtroom instead of a dark alley. That Bill 155 would allow Her Majesty, through her Minister of Finance, to use the so-called special purpose account only for laudable purposes is no answer to the moral wrongfulness of taking a person's property by force without their consent.

History is rife with men of the people who have made their fortunes through crime but whose crimes have been excused or justified by the public because such men of the people have spent some of their ill-gotten gains in philanthropic ways. It is inexcusable for Her Majesty to join the lowly ranks of such cons and to seek an excuse or justification for the theft via a promise to spend the proceeds of forcefully taken property on such things as victim compensation and crime prevention. But that is precisely what Her Majesty will be doing if Bill 155 is passed into law.

Moving on to the Freedom Party's legal objections, there are certain points within the bill to which we think attention should be brought.

First, the term "unlawful activity" includes any offence, whether an offence under federal jurisdiction or under the jurisdiction of any province. The offensive activity or omission in question need not constitute an offence in Ontario at all. The term "unlawful activity" includes not only acts but omissions. Thus, as examples, a failure to file one's tax return, to file a party's election finances returns or to carry on business under a name that has not been duly registered under the Business Names Act is unlawful activity under Bill 155.

The term "proceeds of unlawful activity" includes not only property acquired as a result of unlawful activity but also property any part of which was acquired as a result of unlawful activity. For example, a bank account of \$250,000 or a house purchased with such money is "proceeds of unlawful activity" if only \$1 of that money was acquired as a result of unlawful activity.

The term "proceeds of unlawful activity" includes property acquired indirectly as a result of unlawful activity. Thus, as an example, property acquired via a business that violated Quebec's signage language laws would arguably be proceeds of unlawful activity. As noted above, the unlawful activity need not constitute an offence in Ontario.

A court may make an order allowing Her Majesty the Queen to take a person's property even without attempting to prove that the person was at all involved in an offence of any sort, except that implied by the bill itself, as I'll explain in a minute. Bill 155 would allow Her Majesty to take property that has never been involved in any offence at all. For Her Majesty to take the property, it need only be of the type of property that is likely to be used to engage in forms of unlawful activity that would involve the acquisition of property or the infliction of bodily harm. The most obvious targets, of course, are such things as money, because it is likely to be put to any purpose known to man, computers, firearms, communi-

cations equipment, boats, trucks, well-guarded or remote tracts of land etc.

Having looked at those particular sections, these are our legal submissions.

Bill 155 imposes not a compensatory remedy, but a fine. This is evidenced most persuasively by the fact that the term "proceeds of unlawful activity" includes property only a minute part of which was acquired as a result of so-called unlawful activity. Were the aim merely to ensure that no person possessed ill-gotten gains, Bill 155 would not seek to take legitimately obtained property as well. In Canada, fines are imposed only for the commission of an offence.

The offence imposed by Bill 155 is an absolute liability offence. The crown need not prove that the accused knew or intended to possess or own proceeds of unlawful activity or instruments of unlawful activity; the crown need not prove that the accused had *mens rea*. The crown need only prove that the accused possesses or owns the property in question.

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Bill 155 would not require the crown to prove its case beyond a reasonable doubt but merely on a balance of probabilities, in other words, a more-likely-than-not standard. In Canada, the commission of an offence, even a moving violation, for example, must always be proven beyond a reasonable doubt. Thus, Bill 155 involves a colourable attempt to impose the more-likely-than-not standard or the balance-of-probability standard to convict persons of an unnamed, undefined, absolute liability offence without proving them guilty beyond a reasonable doubt and without proving they had any intention to possess or own proceeds or instruments of unlawful activity.

Freedom Party submits that this is not in accord with fundamental justice under section 7 and related sections of the charter.

It is noteworthy that, pursuant to section 462.37 of the Criminal Code, which is a federal statute, a forfeiture order of the sort sought by Her Majesty under Bill 155 can be obtained only when the person from whom it is taken has been convicted of an enterprise crime. Under the federal regime, it is expressly noted that a forfeiture order is a part of one's sentence for having committed an enterprise crime. Moreover, if the enterprise crime is not proven on a balance of probabilities to have been done in relation to the property in question, the property can be taken by Her Majesty only if the crown proves beyond a reasonable doubt that the property was nonetheless proceeds of crime.

Clearly, Bill 155 is a shameless and colourable attempt to circumvent the hurdles associated with the federal proceeds-of-crime regime. Indeed, a forfeiture order under subsection 3(1) of Bill 155 could be made under circumstances that would not allow Her Majesty to take the proceeds of crime pursuant to section 462.37 of the Criminal Code.

Freedom Party fully expects that if the crown attempts to impose liability on a balance of probabilities, its attempt will not survive scrutiny by the Canadian Charter

of Rights and Freedoms, in particular, section 7 of the charter and the legal rights which serve to elucidate those rights.

Because legal proceedings under the bill would be commenced via the commencement of an action, the rules of civil procedure would apply. That being the case, an accused would be required to make full disclosure of all documents relating in any way to the offence and would be required to answer all relevant questions put to him under oath during examinations for discovery. The bill would require an accused to provide evidence against himself, rather than leaving it to the crown to collect evidence in the same way it is required for any other offence.

Freedom Party submits that this would violate an accused's rights under section 7 of the charter. Not only would the charter be violated by the absence of a requirement that an accused be proven guilty beyond a reasonable doubt, but the section 7 right to "life, liberty and security of the person" could be found to include, as a necessary aspect of the right to life or the right to security of the person, the right to property. In connection with the latter point, former Attorney General Flaherty's public statements that the charter does not protect property rights are, to say the least, premature. The Supreme Court of Canada did not conclude, in the leading on-point decision, which is *Irwin Toy*, that the charter does not protect property rights. To the contrary, it stated that it would be premature to rule out that security of the person encompasses some economic rights for humans but not for corporations. Moreover, the court had nothing to say about the scope of the right to life.

Freedom Party submits that there are strong arguments that the charter protects a right to property, which Bill 155 could not withstand were it made law.

As noted above, Bill 155 imposes a penalty for an offence which it chooses not to name. Specifically, the offence in question is the possession of proceeds of an offence or instruments of unlawful activity.

Freedom Party submits that such a law is criminal in nature. Indeed, Bill 155 would make section 462.37 of the Criminal Code redundant. Freedom Party submits that if the crown attempts to make Bill 155 law, it will fail on the basis that the criminal law is a matter falling under the exclusive jurisdiction of the federal Parliament.

Furthermore, Canada has a Constitution which is "similar in principle to that of the United Kingdom," as can be seen in the preamble of the Constitution Act, 1867, and is governed by the same crown that has agreed to the terms of the Magna Carta and the Bill of Rights. As evidenced by the crown's signing of the Magna Carta and decisions made in the crown's courts since that time, including Ontario's courts since the imposition of the charter or the coming into force of the charter, the crown has given up its power to take a person's property without immediate payment to, or the consent of, the person from whom the property was taken.

What I'm saying is that the Ontario courts have recognized that the Magna Carta is still in force and still

part of our Constitution and that the common law still gives us a right to property.

If Bill 155 does not impose a fine, in other words, if it's not a punitive or an offence-oriented bill, then the crown lacks authority to act on the advice of the provincial Legislature to make Bill 155 law. Her Majesty doesn't have the power any more to take property without giving compensation, so the Legislature can't advise her to pass such a law.

Quite apart from constitutional arguments, it should be obvious to anyone that the threshold for the granting of a forfeiture order under Bill 155 would be so low, the scope of the terms "proceeds of unlawful activity" and "instrument of unlawful activity" so wide and the possible value of forfeited property so high, that government will find it irresistible to seek forfeiture of property connected in no way with an offence. This is, of course, one of the points made to this committee or that will be made to this committee, I presume, in detail by Ms Selick, and we won't expand on those.

If there's any time and if there are any questions, I can—

The Chair: There's about two or three minutes, if there are any questions. Mr Tilson.

Mr Tilson: With respect to subsection 3(3), and that is the section that talks about legitimate owners—

Mr McKeever: Responsible owners.

Mr Tilson: Yes. Your comments about that issue, about seizing property, I think you gave the example of one dollar that may be illegal and the rest of it isn't.

Mr McKeever: Right.

Mr Tilson: Isn't there a way under this bill—at least I believe there is—to sever that?

Mr McKeever: The bill actually imposes a new duty on all people who own any sort of property that might be used in any sort of offence, be it a speeding offence or not filing one's party returns, that if they don't take all reasonable steps necessary to prevent the use of that property in the commission of any offence, then they are not entitled to have that property back.

Mr Tilson: Subsection (3) says the judge, "where it would clearly not be in the interests of justice," can make an order to "protect the legitimate owner's interest in the property." I believe that satisfies your concern, but you can tell me whether it does it or not.

Mr McKeever: In part II of the act, "responsible owner" is defined—I think it's "responsible owner." In any event, it's defined in such a way as to impose a duty on a person. Now, it may be that part I allows a judge in his discretion to award a legitimate owner—

Mr Tilson: A judge can protect that property. That's what that section says.

Mr McKeever: That's what it says, but part II does not give the judge that similar protection. In fact, it only gives the judge authority to return the property to the rightful owner if the rightful owner of the property, be it a rifle, a car or whatever, has taken all reasonable steps to prevent its use in the commission of an offence.

The Chair: Thank you. We really don't have time for any more questions of this speaker. Thank you for coming this afternoon, Mr McKeever.

KAREN SELICK

The Chair: I understand Ms Selick is here. If you'd like to come forward. Sorry, we're a little late. One of our deputants isn't here yet, so we moved forward with the last speaker.

Ms Karen Selick: Good afternoon. My name is Karen Selick. I'm a lawyer in private practice in Belleville, Ontario. I also write a regular monthly column for Canadian Lawyer magazine, and I contribute occasionally, not regularly but from time to time, to opinion pages of the Globe and Mail, the National Post and various other newspapers. I'm here today at my own expense, not representing anybody else, just on my own time, because I think Ontario would be making an enormous and irrevocable mistake if it enacted Bill 155. I'm here to ask you, in fact to beg you, not to pass this bill and not to pass any variation of it.

I have my remarks prepared in written form and I will give them to Mr Prins to distribute afterwards, but I'm just going to speak here directly to you at this point.

I'm not here to tell you that this bill could be tweaked in any way or amended in any way that would make it OK. That's not my position at all. I think it's plainly and simply wrong from start to finish, and it simply must not proceed. I don't think there's anything you could do, any minor amendment, major amendments, that would make this OK.

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I've actually written two pieces about this in the newspaper. One of them was in the National Post that appeared in December and one was in the Globe and Mail that appeared in January. I won't have time in the 10 minutes I've got today to go into everything I said in those articles. Some of you may have read them, but if you would like to read them again, I've posted them on my Web site. It's a very easy URL to remember. It's just my name, www.karenselick.com. I've highlighted that in all the copies of my remarks today that are going to be distributed to you. I've put a special link on my home page to those articles, so if you would like to read further beyond what I can tell you today, please go to my Web site.

The most important thing I want to stress to you today is this: in my view, Bill 155 is one further step down the already slippery slope that Canada is taking towards becoming a police state. This bill will give the government a stake—a very big stake—in the continued existence of organized crime. Money is a big motivator, whether for individuals or for governments. This bill promises to pour money into government coffers. In effect, it will make the government a senior, silent partner to organized crime. Once government can seize the proceeds of crime, or assets suspected of being used in a crime, it will become addicted to that source of funds,

just like any junkie. Then we'll never be able to repeal this law, no matter how much evil we see it doing, no matter how many police officers or judges it corrupts and no matter how many innocent people lose their houses, their money or even their lives.

You probably know that asset forfeiture has become big business in the United States since about 1984 when they beefed up their racketeering laws. Hundreds of asset seizure laws have been passed since then and literally thousands of property seizures take place every week—yes, every week. Many of these seizures are based on the flimsiest of suspicions, and in a huge percentage of cases the people whose money or other assets get seized don't even try to get their property back. They can't afford a lawyer or they can't afford to take time off work to go to court, so they simply throw in the towel. Every time this happens, the cop who made the bust gets some brownie points and he becomes emboldened to do it again.

Here are some of the grounds on which American citizens have had their property seized. One really common situation has been when they've been stopped on the highway for minor traffic violations or even for routine alcohol or seatbelt checks. Just imagine here in Ontario police stopping people under the RIDE program. They have a cute little spaniel with them, trained to sniff for drugs. Did you know that in the US and Britain, they've done studies that have shown that between 80% and 96% of all the paper currency in circulation has traces of cocaine on it? I've never seen any statistics for Canada, but I have no reason to believe it would be any different. In the US, 15% of the paper currency leaving the mint, leaving the US treasury department, straight off the printing presses, has traces of cocaine on it. So just turn those sniffer dogs loose at any RIDE checkpoint and there's a good chance they'll smell drugs in just about any car they care to target.

I wrote a letter about this bill to Mr Flaherty a few months ago and he wrote back to me on January 15, stating that the bill contains "an important number of safeguards." Foremost among these safeguards, he said, is "the requirement of court approval at every step." With all due respect to Mr Flaherty, I can only consider that answer to be a joke. Who says judges are any more impervious to the lure of money than police officers? The money doesn't have to be making a beeline directly into the judges' own pockets in order for judges to be tempted by this. Money going into the court system will mean they can hire more staff, have their offices redecorated, get upgraded notebook computers, get new courtrooms built, get salary increases or longer vacations. There are a lot of reasons why judges will be just as anxious as police officers to get their hands on the proceeds of organized crime.

But Mr Flaherty told me there's another reason I shouldn't worry about this bill. It's because, and I'm quoting exactly from his letter, "More importantly, the proceeds of forfeiture are first made available to victims." I have two problems with this answer. First of all, it isn't even true. The bill does not make proceeds

available first to victims. There's a list in subsection 6(3) of the bill of five different uses to which this money can be put. While compensation to victims appears at the top of the list, this use is not given priority over the other uses; they all have equal status. Two of the five uses refer to giving money to the province of Ontario, a municipality or other public body. Then the fifth item lists some other uses that are going to be prescribed by regulation. I can hardly wait to see what those might be.

But even if we supposed that the money were going to go first to victims of organized crime, as Mr Flaherty said, unfortunately this still does not put my mind at ease because the truth is that most of the activities of organized crime either have no victims at all or have no victims who would be willing to step up to claim their so-called compensation. The largest single activity of organized crime today is drug dealing. Who are the victims here? Do we really expect someone to come cap in hand to the Ontario government and claim compensation from this fund because the marijuana he bought turned out to be oregano or, because he paid for a shipment of cocaine and it never got delivered, it had been seized by the cops?

What are the other major activities of organized crime? Smuggling liquor is another big one. Who's the victim who's going to come and claim compensation here? Some guy who got cirrhosis of the liver by drinking too much untaxed booze?

Smuggling illegal immigrants is another big racket of organized crime. Who's the victim who's going to come and claim compensation here? Some Chinese refugee whose snakehead promised to get him to the US, but abandoned him here in Ontario?

Ladies and gentlemen, ask yourselves this question: what is it that the average Ontario taxpayer really wants the police force in his neighbourhood to do for the taxpayers? The answer is really quite simple. Taxpayers want to sleep soundly at night, knowing their houses aren't going to be burglarized. They want to be able to go out during the day to work, knowing they don't have to install an alarm system just to protect their possessions. They want to be able to walk down the street without getting mugged or raped. If someone commits a fraud using their bank account or credit card, they want the police to get their money back for them.

These are the things taxpayers are willing to pay taxes for, but these are precisely the things the police tell us over and over again they can't do for us. How many of you know someone whose house has been broken into? I'll bet everyone in the room does. What did the police say when they were called: "Sorry, there's not much we can do about it." A friend of mine recently had \$16,000 stolen from his line of credit. It was probably an inside job involving someone from the bank, but what did the police say when he reported it? "Sorry, but for individual frauds we won't look at anything under \$250,000 and, for businesses, the limit is \$1 million."

The average taxpayer really doesn't give a hoot that someone's importing marijuana into the country. A huge

percentage of average taxpayers have smoked pot themselves. Probably half the people in this room have tried it. But we can only afford a limited number of police officers and each of them can work only so many hours a day. We have to make choices about how best to deploy those police man-hours. The average citizen, I'm sure, would say, "Get the burglars and muggers off the street and forget about the guys importing drugs and alcohol."

It's bad enough that our police already demonstrate the opposite priority, but if Bill 155 comes into effect, they will have an additional incentive to divert their resources to crimes that taxpayers consider low priority, because the cops and the police departments and the courts are going to be among the people on the list who get to drink from the trough, once all those tasty crime proceeds start flowing in.

I wish I had more time to tell you what's wrong with this bill. I don't know how much of my 10 minutes I've used already, but I must be pretty close to the limit.

The Chair: It's getting there.

Ms Selick: Yes. I urge you once again to read the articles on my Web site. I will distribute my handout here. I urge you, please, don't proceed with this bill. Abandon this one. This is one US import we can do without.

The Chair: Thank you, Ms Selick.

Mr Kormos: On a point of order, Madam Chair.

The Chair: If you're going to mention you'd like some time for questions—

Mr Kormos: No, no.

The Chair: —because I'm going to allow that.

Mr Kormos: OK. Then I better ask for some time.

The Chair: Mr Cairnduff, I gather, is not here, and we do have a cancellation. I think there's some interest in asking questions. I'll allow maybe five or 10 minutes for questions, Mr Bryant.

1400

Mr Bryant: Thank you for your presentation. I think it speaks for itself, and I appreciate that you put on the record that interested Ontarians can go on to your Web site and read further. Thank you for coming and thank you for making this contribution. I understand you're a citizen just coming here to speak your mind.

You raise a point—and perhaps Mr Tilson in his questions can respond—about who the victims are here who are in fact going to be compensated. Do I take it that it's your view that this is a façade, that there are no victims of organized crime who could get compensation from this?

Ms Selick: There might be the occasional one. I'm sure organized crime is into other things. They are into credit card frauds, for example, but I think you're going to have a very difficult time identifying the individuals who have suffered from this. Most people who are victims of a credit card fraud won't really be victims, because their credit cards are insured to a certain level. It will really be the insurers or the banks that end up having to pick up some of that tab that perhaps will have some claim on this compensation fund.

I just think this idea of compensating those victims in comparison to the other bad things that can happen with this bill, it's just not worth taking those risks because the other risks of this bill are so enormous.

Generally speaking, most of what organized crime does is what we call victimless crime. It's stuff that has been made a crime only because someone has chosen to take a vice and interpret it as a crime. People are there voluntarily engaging in these activities, voluntarily on both sides of the transaction.

Mr Kormos: I'm sympathetic to some of your arguments. I don't know. Again, we're going to be hearing from policing, but when you talk about if organized crime indeed is controlling things like women being transported so that they can be housed as prostitutes or working in strip clubs, that's where it's just sort of a little grey area.

But the concern expressed by Alan Borovoy earlier today was the standard of proof, that this uses—and it was spoken to in the presentation prior to yours—the civil standard on the balance of probabilities whereas a conviction for a criminal offence—thank goodness, because even with that high standard of proof beyond a reasonable doubt we've witnessed a tragic number of unjust convictions. Thank goodness we don't have the death penalty. You really haven't spoken about that part. Do you want to?

Ms Selick: I did mention those. In the first article that was in the National Post I mentioned that. I think you're really going to have problems with the constitutionality of this. In pith and substance this is criminal law. The statements that were made by Mr Flaherty and Mr Tsubouchi months and months ago, before this bill even came in, made it quite clear that this is directed toward criminal law, and I think you're going to have a big problem with that. Once it is criminal law, then yes, you have a problem with the fact that it's this lower standard of proof.

Mr John Hastings (Etobicoke North): Ms Selick, thank you for coming here today. I have read some of your articles in the Post. I would describe you as a champion of property rights in Canada. Would that be a correct depiction?

Ms Selick: I would be pleased to be described that way. Thank you.

Mr Hastings: Could you supply to committee clerk specific examples, if you have them, at a later date—I don't really want you to do an inordinate amount of work since you are a barrister who works on her own, and you've got to make a dollar like everybody else—in the United States under RICO or under similar state statutes that tried to get the forfeiture of property connected to criminal activities and any articles you've come across regarding the corruption of the policing function?

Ms Selick: I did mention some of that.

Mr Hastings: Yes, you did.

Ms Selick: In the first article I wrote about this in the National Post, I mentioned that. There's a very famous one in the US. It was a series of articles published in a

newspaper that was then called the Pittsburgh Press. The name of that has now changed. I think these articles appeared in about 1993 or 1994, maybe even earlier, but a long investigative series about people whose property was being taken with very little grounds, people who couldn't afford to get it back.

In the National Post article, I think I mentioned the case of a man in California. He was quite a wealthy man, a multi-millionaire, whose ranch was broken into. It was quite clear they were deliberately hoping they could find drugs there so that they could seize this property. As it turned out, they killed him in the raid and there never were any drugs on the property. There have been people killed for this sort of thing. There have been all kinds of people who have lost property, lost houses because their child made a phone call, was dealing dope or something. The abuses have been horrendous.

In the US, they recently passed some amending legislation—I think it was in about March or April of last year—that was designed to deal with some of these abuses, but from what I've read, it wasn't very effective in dealing with the abuses—

Mr Hastings: By the US Congress?

Ms Selick: Yes. It got watered down along the way. That's why I'm concerned about the addictive nature of this type of legislation for the Legislature. Once they had this passed, then the battle to get it changed was horrendous. All these police associations came forward and said, "It's a wonderful thing, and you shouldn't change it." The amending legislation, the restricting legislation, was watered down severely, so that I don't think it did much good.

Mr Hastings: Do you have any examples, Ms Selick, of states, governments, the US government, the FBI or whatever agency you can think of in the literature or where I could come across some, where the people who had their property seized under these civil measures sued back, sued the state government, the state police or whatever agency—

Ms Selick: I'm sure there must have been litigation of that kind. I don't have any specific knowledge of any.

Mr Hastings: Do you expect that would be one of the other unintended consequences coming from this stuff?

Ms Selick: I'm quite confident that here in Ontario it will be, just because of the constitutional issue. People aren't going to take this lying down when there's that big, glaring gap there that they can take a run at it with. I'm sure here it will be a problem.

The Chair: Mr Kormos.

Mr Kormos: I just wondered, Madam Chair, whether as a matter of course the participants from out of town are advised of their right to claim for mileage etc.

The Chair: Yes, they are.

Mr Kormos: OK, fine.

Ms Selick: I wasn't advised of that.

Mr Kormos: Oh, well, I'm glad I raised it.

Mr Hastings: Yes, for mileage.

Mr Kormos: Before you leave, why don't you just speak to the clerk?

Ms Selick: Thank you.

The Chair: Thank you very much for coming in.

We do have a couple of no-shows. The next delegation is at 2:40, so I think we'll take a half-hour recess.

The committee recessed from 1407 to 1439.

CANADIAN BANKERS ASSOCIATION

The Chair: I'll call the meeting back to order. The next presenter is Mr Gene McLean, director of security for the Canadian Bankers Association. Mr McLean, would you like to come forward, please? You have 20 minutes.

Mr Gene McLean: Madam Chair, committee members, good afternoon. My name is Gene McLean. I'm the director of security for the Canadian Bankers Association. In this role, I am responsible for working with our member banks on the development and execution of strategies to prevent, detect and reduce criminal activity against banks.

Prior to joining the Canadian Bankers Association, I served with the Royal Canadian Mounted Police for more than 25 years. While with the RCMP, I was responsible for numerous investigations of organized crime and international frauds. I also occupied the role and office of RCMP liaison officer in England and Switzerland for a number of years.

On behalf of the banking industry, I'm pleased to be with you today to discuss organized crime against banks. I cannot comment on the remedies contained in the proposed legislation, as CBA's member banks have not yet completed their review of the bill in detail. However, I welcome the opportunity to provide you with an overview of the problem of organized crime against banks and to confirm the industry's commitment to prevent and protect bank personnel and customers from the effects of organized crime.

The Canadian Bankers Association is pleased that the Ontario government recognizes the need to better combat organized crime, which is indeed a serious problem. There are a number of criminal organizations in Canada. Many of them are active here in Ontario. Each year, criminal activities cost Ontario residents and businesses millions of dollars in losses. I'm here to discuss organized crimes against banks and how the proceeds of those crimes are used to finance other criminal activities, including the importation and distribution of narcotics, the sale and use of firearms and human smuggling, to name a few. These crimes filter down to where we live and should be cause for general concern.

I would like to note that Canada's banks have a long history of working with government and law enforcement to deter criminal activity against banks and to protect bank employees and customers from these crimes. Together, our efforts are effective, but we must be constantly vigilant in our fight against criminal activity, as these organizations are now operating globally and have access to vast resources and technical capabilities.

Money laundering, bank robberies, credit card fraud and counterfeit monetary instruments are a few examples of the types of organized crime against banks, their employees and customers. Bank robberies are the most visible form of crime against the banking industry, its personnel and customers. Bank robberies amount to approximately \$5 million in annual losses. The industry, through the good efforts of law enforcement, combined with the deterrence, detection and investigation by the banks themselves, has a very high success rate in the apprehension of bank robbers: a percentile of 85% to 90%.

However, the banking industry's primary concern is the safety of our employees and customers. Where credit card fraud and counterfeiting may appear to the untrained eye to be victimless crimes, bank robberies often have a traumatic effect on our personnel and customers. In some cases, despite post-robbery counselling, employees and customers continue to suffer trauma for extended periods of time. Sometimes, depending on the severity of the robbery, they can suffer for years after the incident. This is hardly a victimless crime.

Credit card fraud is a sophisticated form of organized crime against banks. The industry is dedicated to the security of the credit card system and to protecting customers' credit cards, but fraud does occur. In fact, for the year ended December 31, 1999, losses due to credit card fraud totalled \$227 million for the Canadian issuers of Visa, MasterCard and American Express. The use of counterfeit cards is the most common form of credit card fraud and accounted for 54% of the dollars lost in 1999. Thanks to the efforts of the industry and law enforcement, dollar loss figures have gone down from the \$227 million reported at the end of 1999 to approximately \$203 million for the 12-month period ending June 30, 2000.

Customers are protected from credit card fraud and are not financially liable for any fraudulent use of their cards. In addition, banks work to identify and prevent credit card fraud through various means. Banks contact card holders when transaction irregularities occur. For example, if you've never used your credit card to make a telephone call and this afternoon you find yourself without a quarter and use your card instead, this irregular transaction could be flagged and a representative from your bank would no doubt call to confirm that your card was not being used fraudulently by someone else. Similarly, the credit card fraud prevention and detection system would identify if your card was used in two different cities on the same day. Again, your bank, to confirm that your card was not being used fraudulently, would contact you. Also, bank customers are normally contacted if their credit card has been compromised in a known fraud.

In addition to these fraud prevention and detection efforts, the banking industry, in conjunction with the credit card plans, is continually working on methods to improve credit card security by reviewing existing security features and examining possible new solutions, such

as secure chip transactions. Certainly, the banking industry invests millions of dollars in sophisticated fraud detection systems, and the various processes are reviewed on an ongoing basis to ensure that our prevention and detection methods are current and effective.

The banking industry also works closely with law enforcement, governments and the legal system to deter criminal activity against banks and bank customers. A recent result of this co-operation was the arrest of several people in Vancouver who were part of an organized crime group in one of the largest counterfeit credit card operations in North American history. This past January, Vancouver law enforcement seized equipment and credit card data used to produce thousands of counterfeit cards with a combined possible credit exposure of \$200 million. The crime syndicate recruited employees at several restaurants, gas stations and other establishments in the Vancouver area to skim the credit card data of thousands of unsuspecting customers. The credit card data was then used to manufacture counterfeit cards that were distributed to cities across North America and as far away as Brazil, Taiwan, Singapore and Saudi Arabia.

The production and passing of counterfeit monetary instruments is another form of organized crime against banks. As you may have heard in the news, just last week an organized crime group attempted to secure a letter of credit for counterfeit monetary instruments, bearer bonds, with a face value of US\$25 billion with a Canadian bank here in Toronto. The RCMP credited the banking industry with good detection processes that prevented this fraud and enabled them to apprehend the criminals.

The banking industry, working in co-operation with government and law enforcement, is effective at preventing and protecting banks, their personnel and customers from a great deal of organized crime. But crimes against banks do occur and take many forms, and while some view large-scale organized fraud as a non-violent, white-collar crime that does not impact on ordinary citizens, law enforcement experts indicate that these monies are used to finance other criminal activity, much of it of a violent nature.

These crimes affect all of us where we live. The multi-millions of dollars defrauded from banks on an annual basis becomes foundation money to finance further criminal activity, such as the importation and distribution of narcotics, the sale and use of firearms, human smuggling and prostitution, to name a few. These crimes filter down to our neighbourhoods and, according to law enforcement, add to the growing violence in our streets that is reported on a regular basis.

The Canadian Bankers Association is pleased that the Ontario government recognizes the need to more vigorously combat organized crime. The banking industry looks forward to ongoing co-operation with government, law enforcement and the legal system to prevent and protect bank personnel and customers from criminal attacks against banks.

On behalf of the Canadian Bankers Association and the member banks, I would like to thank you all for your attention.

I should have introduced Mr Michael Green from the CBA at the beginning, but he and I are here today to answer any of your questions.

The Chair: Thank you, Mr McLean. We have about six minutes left for questions, starting with Mr Kormos.

Mr Kormos: What is down the road, in terms of being planned, to control credit card fraud? I'm talking about the way cards are manufactured. As I understand it, they can be reproduced with similar types of machinery. What's being looked at? Are photo credit cards being looked at? What's being looked at to respond to that?

Mr McLean: What's being looked at, next generation, would be an encrypted chip card, to protect the authorization and transaction on cards, which is designed to prevent the counterfeiting or skimming, as it's called, of the mag stripe, which is the back of the credit card, where the data is. So a chip card or a smart card will be the next generation of card that we would see.

1450

Mr Kormos: When we talk about organized crime and organized criminal activity, I suspect that means several things to as many people. What are you talking about when you're talking about organized crime, as compared to disorganized? I'm being silly, but what are you talking about when you're talking about organized crime?

Mr McLean: When you've got the latest statistics, ending June 30, 2000, about \$203 million in losses on credit card fraud, 53% of that is counterfeiting or skimming. This is done with sophisticated equipment and people with a certain knowledge. These people come together in an organized activity to conduct this work; it's not something that's done by somebody in their basement at home at night. So there is an organized activity to that. These criminals have used this process to generate some funds that they then can use for other aspects of criminal activity. Again, it's not necessarily a commodity; they're just looking at an opportunity to make money.

Mr Hastings: Mr McLean and Mr Green, thank you for coming in. I assume you're in touch with the managers of security in the different credit card companies across our country.

Mr McLean: Yes, I am.

Mr Hastings: As far as you know, have they adopted the most effective, up-to-date, most sophisticated security methodologies to reduce fraud?

Mr McLean: What I can tell you is that we meet on a regular, ongoing basis and we discuss best practices. Obviously, it's an ongoing, continuous review of our systems and our best practices. We look at this as a very non-competitive issue: criminals will attack one bank or the other or one card or another. They really have no customer loyalty and will attack more than one institution. So we work very closely together to ensure that from an industry perspective we're all on the same page

and adopting best practices, with the best systems in your own networks in place.

Mr Hastings: So as far as you're concerned, they do have the most current and up-to-date technological security?

Mr McLean: Without knowing each system intimately, I would say yes, that everyone is working in best practices and the best ways of detecting fraud with fraud detection systems in place to both deter and detect and prevent fraud.

Mr Hastings: You say on page 3, "Customers are protected from credit card fraud and are not financially liable for any fraudulent use." Surely you're not telling me that I believe in Santa Claus, because inevitably it is not true that the consumer will pick up the cost of your fraud, whoever the fraudsters are, in any given year; that the eventual cost, whatever it is yearly, gets translated down to the individual consumer? He or she doesn't know that there's an additional amount; the percentage is probably encapsulated in the monthly charge. They get you back for the money you lost.

Mr McLean: What I can say to that is that obviously there's a cost to doing business, and fraud is obviously part of that formula. From a business perspective, I wouldn't be able to answer that. My role is security, and I couldn't comment on that.

Mr Hastings: Could Mr Green, perhaps, or have we gone over?

The Chair: I'm sorry to have to tell you that.

Mr Michael Green: If I could just make one very quick comment, Madam Chair. Certainly when you talk about credit card business, it's a very, very high-volume business, hence the loss ratio. Certainly the pricing on a credit card is a bit higher than a normal loan, simply because it's unsecured, high-volume business.

Mr Bryant: Thank you for coming. I understand from your comments that you had said basically the association wasn't going to comment yet on the remedies contained in this bill. How are the victims of organized crime that you've discussed going to be assisted by a remedy that targets Ontario property holders if in fact, as you described, organized crime can just set up shop across the border? In other words, how are these victims going to be assisted by a bill that only deals with Ontario property holders?

Mr McLean: Again, I can't comment on that because we and the member banks certainly haven't reviewed the bill in detail. I guess until that time arrives we couldn't provide a proper response to that.

Mr Bryant: Given your experience, could you talk about the international aspect of organized crime?

Mr McLean: International organized crime is truly that. It really is global and they can be situated anywhere and attack systems or individuals across borders and around the world. I guess what we're trying to do, certainly within the banking industry, is to develop a very high-level security protection system that protects people personally and their assets.

Mr Bryant: Just to confirm, you work with other organizations, obviously, across the country, but in other nations as well?

Mr McLean: We work internationally.

Mr Bryant: Right. All my questions have to do with the bill, so I'll just thank you for coming.

The Chair: Thank you very much, Mr McLean and Mr Green, for coming this afternoon.

TORONTO POLICE SERVICE

The Chair: The next delegation is the Toronto Police Service, Chief Julian Fantino, Staff Superintendent Rocky Cleveland and counsel Jerry Wiley. Good afternoon to you.

Mr Julian Fantino: Good afternoon.

The Chair: You have 20 minutes in which to make your presentation, Chief, in the hope that we can also ask some questions in that time.

Mr Fantino: Thank you very much.

As chief of police of Canada's largest municipal police service, I and my colleagues appreciate the opportunity to speak to you about Bill 155 and what we believe to be an issue that is being addressed here, and that is the whole aspect of public safety and security and as such relates to organized crime.

It is a well-established fact that organized crime is profit motivated and that if you take the profit out of organized crime—or crime generally, but in the context of this discussion organized crime—you have in effect cut the head off of the dragon and the body, hopefully, will then die.

Unfortunately, measures taken at the federal level at this point in time to combat organized crime have been, mostly, ineffectual. Even though the battlefield in the fight against organized crime in the main falls within the jurisdictions of municipal police services, not only in this province but in this country, oftentimes the views and advice of police leaders in those very municipalities where organized crime is very much impacting communities and flourishing have all too often been discounted or considered irrelevant in the debate.

In Ontario, we have in the law enforcement community the people, we have the talent, we have the will, and we certainly have the desire to fulfill our public safety mandate, and that includes, of course, tackling the most intricate and intimate and most difficult challenges that are posed by an ever-growing, ever-sophisticated organized crime network that is global in nature. I believe as well that there is no question in our resolve to do everything we can within our scope and our mandate and within the parameters of the law.

But to paraphrase a Winston Churchill comment, someone must give us the tools to, in effect, do our job. At the present time the tools available to us are inadequate and we are sadly lacking in organized-crime-specific legislation and efficient justice system procedures which would enable us to effectively disrupt and dismantle the entrenched and sophisticated organized

crime enterprises that in essence victimize all of us in one way or another: everything we buy, everything we use or acquire, every service is well impacted by the added costs that are being incurred because of the impact of organized crime. That goes right down, as well, to the quality of life that is available to every citizen of this country, this province, this city and certainly neighbourhoods and how they're impacted.

If I can talk about crime and disorder for instance, some people don't believe there is a link between that which happens at the community level and that which has a direct link back to organized crime.

1500

The one example I can make that is probably most evident to all of us is the whole issue of drug distribution, the impact of drugs in our community and our society on our children. One has to believe, as I do from experience, that the drug subculture operates at a very high international, global level. Those who import, manufacture, distribute drugs at the high level obviously have a profit-motivated endeavour. That then, of course, trickles right down to the community level. The most vulnerable communities, the most vulnerable people, are then impacted by what goes on, and much of that is initiated by the ruthless profits that are made by organized crime enterprises. The victims in all of that, as I stated earlier, in a very direct sense are all of us as citizens, and more particularly the most vulnerable components of our community, neighbourhoods that by virtue of their conditions are somewhat disenfranchised. Then there is all that residual crime that is associated with the whole drug subculture. All of that has a direct link back to organized crime.

That is why, although this piece of legislation may not be perfect in every sense, nor will it, of course, deal with every eventuality and every issue, nonetheless I am pleased that the government of Ontario has taken the initiative to provide law enforcement agencies and communities and all of us as a society with an added piece of legislation, an added tool to help us take the profit out of organized crime.

Granted, we can dwell on what the bill can't do. I would like more to dwell on the things that it can do. Everything that the bill can do is a tremendous help to us. It lifts our spirits and it helps us focus on the issues that are very critical to us, which is to make a powerful statement with legislation that hopefully will attain the desired results: to absolutely make profitable illegal activities a non-profit activity. So taking the profit out of crime, as this bill endeavours to do, is very important.

Bill 155 provides a method for the forfeiture of assets which have been obtained by unlawful activities. It has a number of advantages from our perspective, from a policing point of view.

First and foremost, it is aimed at the profits of organized crime and it has the potential of addressing that. As I said earlier, taking the profit out of organized crime is essential to the war on organized crime.

Secondly, Bill 155 is structured so that the profits from unlawful activity are seized through the use of the civil rather than the criminal process. It is not a criminal trial process; it is a civil asset process. The use of civil lawyers and associated professionals in carrying out the provisions of the bill, with a minimum of police involvement, will free up scarce police resources to do other, much more needed work in the trenches for our people.

Thirdly, the bill provides a mechanism for compensating persons who suffer monetary loss or other damages as a result of unlawful activity.

Most importantly from a law enforcement perspective, the bill provides a method of preventing those persons who engage in unlawful activity from keeping property that was acquired as a result of that unlawful activity. In other words, ownership and use of property obtained through illegal means does not constitute lawful colour-of-right ownership.

Finally, the act recognizes the need to compensate municipalities for losses—that is important to us—for the expenses incurred in the investigation and enforcement of this law, and presumably some of the proceeds then derived can be directed to deferring the expenses of police services.

There are a few other good points. It's important to also appreciate that through this bill there's a very public recognition by the government of the day that there is a need to address this issue. There's a recognition that there is independence of the police in this regard, and the criminal process will take precedence over the civil process. The procedures will be developed to keep the criminal and civil processes separate and, as I understand it, the issue of criminal information will be protected.

The provisions of the act which are, I suppose, somewhat in debate I can cite. Those are that proof is on balance of probabilities and not beyond a reasonable doubt. There seems to be an issue that there does not have to be a conviction or even a charge laid before the act can be invoked. There is the intent in conspiracy, that one of the parties knew or ought to have known that the activity would be likely to result in injury, for instance. The act is very broadly worded and does cast a wide net. The bill will face, from what I understand, some challenges, but again that's a given with any new piece of legislation, that there always are certain aspects that need to be ironed out and fine-tuned. We welcome the opportunity to participate in that process as well, such as we're doing here today.

In closing, I would like to say again that the government should be applauded for its initiative in creating this legislation to take the profit out of organized crime. It makes good moral and ethical sense. It's the right thing to do. It is a much-needed and long-overdue measure which has been, I believe, neglected at the federal level. Our goal should not be to wipe out organized crime; its international nature precludes that. Instead, the goal of an organized crime strategy should be to make Canada the absolute worst place in the world for organized crime to

operate. I believe this legislation is a giant step forward in achieving that goal, at least in the province of Ontario.

The Chair: Thank you, Chief Fantino. We'll turn to the government side. Mr Tilson, you have about three minutes.

Mr Tilson: Thank you for coming. The issues that have been raised, particularly in the media lately, of stakeouts of police detachments and threats to reporters and murders—we had former speakers in the banking business talking about the increase of credit card fraud, a whole group of things which I'm sure you could tell us a lot about and which we don't have the time for, unfortunately.

Yet we have had some people come to us—one of the earlier speakers this afternoon who came to us, a person who writes, said, "The impact on the average citizen—they're not really concerned about those things." We're talking about the average person with a credit card, because they call up the credit card company and they're protected and they don't really get involved in the stakeouts of police detachments. Dogs can smell drugs on all money. You know what I'm saying? She said there's not really a great deal that you can do.

My question is, talking specifically about the impact on the average citizen—I don't, quite frankly, agree with her, but talking about that—how can we build community support for initiatives like this to fight organized crime generally?

Mr Fantino: To begin with, I'd like to make the absolutely truthful statement that organized crime is in all of our pockets. It impacts all of our lives and we're all threatened by it.

There's also an element of violence associated with what we're talking about here. It isn't just the impact on the financial aspect, losses and so forth. We have real living, breathing, innocent people being killed. The impact of violence, which I didn't even address in this particular presentation, is all part and parcel of what organized crime is all about: the predisposition to do whatever it takes to acquire illegal profits. It's all profit motivated.

I think what we need to do and probably have not done very well in the past is articulate the issues well enough to receive the ear of the public, and in some cases the policy-makers, not only to this very significant economic threat to our nation but the whole issue of public safety as well. They go hand in hand.

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A lot of the violence we experience front-on day in and day out is not insulated or isolated from other causal impacts and other factors. A lot of it is the turf wars over drugs, distribution networks, fighting for basically blocks of sidewalk where business is done.

The out-and-out assault on vulnerable communities: look at the distribution of crack cocaine, for instance. Where does it most impact communities? The most vulnerable citizens of society. Who is doing this? I can guarantee you that there's a direct link back to organized crime. Why are they doing it? Because of the profits. I

can go one step further: it's because of a very soft system of justice that we have in this country that so many of these things have been allowed to flourish.

Mr Bryant: Thank you for coming. As a result of downloading, there may be a situation where you're going to have to try to get by with less, not more, which is what you need to fight organized crime. Can you talk a little bit about why it is so expensive for law enforcement to tackle organized crime and what's different about it that people might not be aware of?

Mr Fantino: That's a very good question, actually. We're talking about very sophisticated activities that are global in nature, greatly enhanced by world travel being what it is and the use of technology. But more than anything else, I believe, is the extraordinary profits that can be realized with very little, if any, fear of consequences. So you have a significant imbalance with regard to our ability as law enforcement people to tackle those issues.

It goes to organized-crime-specific legislation, or the lack thereof. It goes to our ability to sustain long-term, prolonged investigations to dismantle these organizations and not just tinker with them; our ability to work with our colleagues not only in Canada and Ontario, and certainly in Canada, but on the international playing field, if I can put it that way.

You're quite right: it's all resource-difficult situations for us. It's all labour-intensive work. The technology piece is very difficult, as is the ability to sustain long-term investigations that in effect will dismantle these organizations, which I think is the most effective way to do prevention anyway.

Having said all of that, the problem we have is one of competing interests and agendas and also mandates. At the very same time, we have to deal with this extraordinary demand on us, this very serious public safety issue, we also have the constant demands for service otherwise: in the city of Toronto, about 1.8 million calls for service annually that probably have no relationship to this at all, other than the after-effect.

So you're quite right, sir: it's a resource issue, it's a legislation issue and it's also a policy issue, our willingness as a nation, if you will, to tackle this issue. It can't be done at the local community level; it can't be done at any one government level. We all have to believe that this is a very significant threat that impacts all of us.

Mr Bryant: Are we falling behind internationally in this sense? It has been said that Canada is a safer haven—

Mr Fantino: I think I said that yesterday.

Mr Bryant: It has been said, then. Between the lack of intergovernmental co-operation and in terms of provincial and municipal downloading, in terms of the changes to the federal spending power as well: in all that, we're falling behind. Can you talk about the importance of intergovernmental co-operation and how these competing agendas are causing us to fall behind?

Mr Fantino: The way I look at things is, all of the things we do, be it in law enforcement, be it in govern-

ments, be it wherever, when it comes to dealing with public safety issues, greater-public-good issues, everything should be transparent. We all need to work together. That also goes to us as law enforcement people. We need to work better together: the ability to share information, the ability to join in tackling critical strategic targets that will attain the hoped for result, which is to dismantle these organizations. We all have to revisit what it is that we do and how we're doing it. We all have to look at this issue as a shared responsibility.

I can just give you this example. For many years we've been talking about community-based policing. As you know, it has been a glorious model for how things should be done. I would like to suggest that we now need to talk about community-based government, where everyone comes to the problem-solving table and everyone has a responsibility and an accountability for the outcomes. No longer can we defer to other people to do the things that need to be done collectively and co-operatively—integrating our collective resources, the policy-making, the laws—the law enforcement community, all of us, coming to bear on this issue because, as I stated earlier, it's foolishness for anybody to believe that we're not impacted severely by all of this.

In some places—the outlaw biker movement, for instance, in Quebec, the body count there is well over 150 killings. In that there have been innocent people killed—the young DesRochers boy, 11 years of age, about six years ago. So we're all impacted by it and we're all concerned about it. I certainly am. If that were not the case, I wouldn't be here.

Mr Kormos: What is the Toronto police services' experience with the existing Criminal Code provisions for forfeiture of proceeds of crime?

Mr Fantino: We do use it and the experience is, to the extent that we can, we are embracing every piece of legislation to go after the proceeds. But that's a criminal process and there are a lot of complications there. As well, it's labour-intensive, and there are all kinds of issues of liability and being able to effectively and quickly seize the assets before actual due process is concluded. This legislation has been modelled elsewhere and it's through civil process. In other words, we don't have to wait for all of the other things that we need to do with respect to the criminal process.

As I stated earlier, Mr Kormos, and I think it's a fair statement on my part, this does not have the ultimate answer for us. It's just one more tool, and we welcome the opportunity to use any tool to, in effect, accomplish the lawful outcome, to take the profit out of crime.

Mr Kormos: I'm down from Niagara region, and our Chief Nicholls is coming up here over the next couple of days. Unfortunately, I'm not sure, but I haven't seen the OPP CIB anti-rackets on the list of participants. The press earlier today was suggesting that somehow Niagara is unique, that Niagara has special problems, and I felt a little bit of resentment about that. I wanted to reassure people.

We're all impacted, and I agree with you on your observations about crime and organized crime. And you heard the bankers' association talk about organized crime from the broadest definition of "organized," literally. Crime that is organized as compared to literally dis-organized crime, the individual who goes out there and commits a crime. Who should we be concerned about? What is the organized crime? You talked about bikers and that's high-profile in the news. Who should we, as a community, be worried about when we're talking about organized crime?

Mr Fantino: We have to do our own homework with regard to picking priorities or targeting priorities. The whole issue of organized crime is something we need to tackle, period, because it's commodity-driven. It doesn't really matter what the activity is; it's wherever there is money to be made. One day it will be drugs, the next day it will be the sex trade, the next day it will be extortion, and on it goes. There is an ebb and flow of activities now, so you can't say that we will only deal with this one entity who may be a gang of criminals who are, for instance, committing frauds with fraudulent credit cards while that activity may in essence be also funding a whole lot of drug-dealing activities. In other words, it's all interconnected. My suggestion would be that we obviously need to target; we need to do that strategically. We need to do intelligence-driven kinds of investigations. But if you start attacking it, at some point there's a vulnerability that the house of cards will and in fact has folded many times.

With regard to Niagara, I don't know where the bad rap on Niagara has come from.

Mr Kormos: Not from me.

Mr Fantino: Niagara is no less and no more impacted than any of us. I can tell you that with some authority.

The Chair: Thank you very much, Chief Fantino, for coming this afternoon.

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NATHANSON CENTRE FOR THE STUDY
OF ORGANIZED CRIME
AND CORRUPTION,
OSGOODE HALL LAW SCHOOL

The Chair: The next presenter is Dr Margaret Beare, of the Nathanson Centre, Osgoode Hall Law School.

Dr Margaret Beare: I thank you very much for the opportunity to come and speak to you today. Unlike Chief Fantino, this piece of legislation does not lift my spirits. I guess I'm somewhat surprised, in the sense that my thinking is that the hearing is about a piece of legislation that's specific to one kind or one strategy, as opposed to all of the other strategies against organized crime. It is not a hearing to emphasize the seriousness or the gravity of organized crime. At the Nathanson Centre, we accept the fact that organized crime, or crimes of all sorts, are in fact serious, but what seems to be happening recently is that virtually any and every additional piece of

power, legislation, resource, whatever, is sold to us under the umbrella of an ever-growing threat of organized crime. Somehow, if you make that threat big enough, you can justify whatever you're saying underneath that rhetoric. I find it distressing because from the point of view of the Nathanson Centre, we want organized crime to be taken seriously, but we don't want it to become the fodder for what we would argue in this case could be much worse than the situation it's meant to correct.

I know you've had people come in all day long and you probably have heard a lot of the points I am making. I have just handed out to you a sheet of paper that says that I'm going to address very briefly four key issues, four issues that I think are particularly important.

First of all there's this notion of the creeping erosion of our protections. I had officials from the Ontario government call Osgoode and virtually gloat that the beauty of this is that you didn't even have to charge the person. That is the beauty of civil forfeiture: you don't even have to charge the person. In fact, as your legislation says, even if the person is acquitted of the charge, you can still go after them civilly. This is based very firmly on the belief that "We know who is guilty; we just can't prove it." As you've all been reading in the newspapers in the last number of days, even the Supreme Court of Canada has come to the conclusion that no, sometimes we don't know who is guilty, even though we really think we do. So I am concerned with the potential abuses that would seem to be built into this.

One of the people I talked to, a supporter of the legislation, used the example of telemarketers as being something that is very serious, definitely ruins large numbers of vulnerable lives, and that the civil forfeiture could be used to go after. When I said to them, "Yes, but if you know who these people are, why then would the police not be building criminal cases?" The answer was that it's hard to get the police to prioritize some of those kinds of criminals and some of those kinds of criminal activities. In fact, Chief Fantino just supported that notion when he said something to the effect that, "This allows the police to get on with the much more needed work of the police."

To me, that is faulty reasoning. If we're bringing in a powerful piece of legislation like this and then we're justifying it on the basis that we can then allow the police to get on with something that's more important, it doesn't stand up, as far as my thinking goes. It has been compared by colleagues to quasi-criminal legislation, in the sense that it allows Ontario to do via civil legislation that which, in terms of jurisdictional divisions between the federal and provincial government, could perhaps not normally be done.

Chief Fantino eloquently talked about the powerful organized criminal that you would be stripping the proceeds from. Experience in other countries, and somebody here asked about experience in other countries in terms of the kind of legislation, tells us that civil forfeiture tends to go after the most vulnerable. You do not go after the person who has the very expensive, costly lawyers and who could sort of turn the case back

upon the justice system. You tend to target the most vulnerable. So again, in terms of dismantling organized crime, yes, we'd all like to "dismantle" organized crime; that isn't the issue here. The issue here is the use of civil forfeiture to do it.

I guess I'm particularly excited around the notion of the hypocrisy of this bill. The rhetoric gets all confused. We talk about taking the proceeds away from organized crime as if Ontario has just had a brand new notion that this is the way to dismantle organized crime. Yes, taking the proceeds away from crime is an excellent way to hurt organized criminals, but fortunately we have had, as Chief Fantino acknowledged, criminal proceeds-of-crime legislation in place since 1989. Further, Ontario is the province that tends to use it less than some of the other provinces, and they use it less for a very real reason. They use it less because it requires that the Attorney General of the province sign an undertaking to take responsibility in those cases where a mistake is made, in those cases where somebody's life is unfairly disrupted.

Again, the beauty of this legislation, as it appears in draft, is that "No action or other proceeding may be commenced against the Attorney General, the crown ... or any person," blah, blah, blah, based on sort of a "conduct in good faith" clause. Chief Fantino acknowledged that there were certain liability things that hindered the use of criminal forfeiture, and he's absolutely right. Those liability things are not part and parcel of this legislation, and I would argue that it's to the detriment of the legislation that that is so.

The need for this legislation is based in part on the summit that was held. I find the Lessons Learned document a bit upsetting from the point of view that critics were not invited to that summit, so it was not an open debate about what the legislation might mean. To some extent it mimics the United States experience and yet, as we know, at least at the federal level, the United States is backing away from some of the injustices of civil forfeiture.

I think that from a police department's point of view, there should be some concern about this legislation. Looking at experiences in other places, we see not only the biasing of justice but also the corruption of police as being associated with this kind of legislation. Now, a supporter of the legislation might say that's only in those other jurisdictions because they directly get the money back. Then again, to my surprise, I guess, because I had heard all the rhetoric about how victims' groups are getting it in this legislation, I read in the legislation and in the draft release that the money could also go back to pay for "programs that prevent victimization by organized crime." As I kept reading, "prevent victimization by organized crime" struck me as money going to the police to help cover the costs of their organized crime enforcement. So there is a vested interest in what will be the quick, simple seizure, and, as I said right at the very beginning, the beautiful part of it being that you don't even have to charge the individual.

Those are the concerns I have with the legislation. My concerns are backed up by the fact that I think we have in place powerful legislation. Unlike Chief Fantino, I would argue that that powerful legislation is not being fully used at present, and there I am talking about the criminal seizure of the proceeds of crime. I am fully in support of the idea that taking the proceeds of crime away from criminals is perhaps one of the best ways to tackle this kind of criminal activity, but it's already on the books and it requires that a person be found guilty. Thank you very much.

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The Chair: Thank you very much, Ms Beare. We have about three minutes each for questions.

Mr Bryant: Thank you very much for coming. Are you able to say whether or not the federal provisions were used in Ontario more before 1985 than after 1985?

Dr Beare: Is that 1985?

Mr Bryant: Sorry, 1995.

Dr Beare: No, I can't tell you. All I know and my understanding is that even to the present it is not used in Ontario as much as it is in BC and in Quebec. It takes a while for any of the provinces to get up and running on a new piece of legislation; 1995 would have been fairly soon. But the answer to your question is no.

Mr Bryant: One of my concerns is that this is now being pushed off to the civil courts and there has been no compensation, if you like, or no addressing of the resource needs of the civil courts, which are already backlogged, of course. Do you have any concern that this is just pushing the problem off into another court and that it should better be pursued in a criminal court?

Dr Beare: From a resourcing point of view in terms of it being shunted off to civil court, no, I don't know anything about that. It is a whole area that I do not think ought to be shunted off to the civil court. The resources that are seized might conceivably be used to help provide some of the resources for the concern you are discussing. I just think it's dangerous to be shunting this off in that direction.

Mr Bryant: Lastly—or maybe lastly—can you talk a little about how the United States is moving away from this type of legislation.

Dr Beare: There are three or four aspects that they brought in at the federal level, and perhaps some of the states are picking up on the federal level, but a lot of the states have not; they've kept it wide open. One of those conditions, and in fact it's the only one I can think of right now, is an important one: it's the reverse onus. They put the onus back on the federal government to prove that in fact the seized items were the proceeds of crime, whereas before so much of the violation hung on the fact that you seized the product and then made the person prove otherwise. That is what has been reversed at the federal level.

The Chair: Last question.

Mr Bryant: We heard before, in terms of the presentation from the ministry, I think I'm right to say, that

there is no reverse onus in this legislation. Do you agree with that?

Dr Beare: As I understand it, the items are seized; the person has to argue why they ought not to have been seized.

Mr Bryant: And that's a reverse onus.

Dr Beare: I think so.

Mr Bryant: It sounds like it.

Mr Kormos: This whole concept of organized crime has been tossed around and, as I said a few minutes ago, depending on who's presenting, it seems to be a different thing. If you want to use biker gangs, you can use biker gangs, rackets, the whole nine yards. Can you help us, then, in terms of what is organized crime in Ontario, as you understand it?

Dr Beare: Oh, no.

Mr Kormos: I only have three minutes and I want to ask you something else.

Dr Beare: I guess the only thing I can say to that is that if I were arguing for this piece of legislation, I would be arguing for it from the point of view of serious financial frauds. Again, I'm sure a lot of the speakers who spoke would have called that organized crime. I've increasingly come to the conclusion that organized crime is the umbrella protection-intimidation-extortion structure, whereas the activity is very often, unlike what we often hear, individual criminal entrepreneurs doing something serious and bad. This legislation, I would argue again, even if you didn't worry about all of the dangers of it, might take money away from these individual, serious criminal entrepreneurs; it is not going to be dismantling anything.

Mr Kormos: If you had been consulted about what this or any government could do to develop a strategy to really take on organized crime, what would you have told the government?

Dr Beare: I would have said what I've said on a number of occasions: use the legislation that we have; make up for some of the cutbacks in police resources that have been going on and now are sort of being rectified in some jurisdictions. That was a serious situation. The police really were cut to the bone. A lot of good work at fighting organized crime, I would argue, happens at the street level by traditional police work doing good, traditional policing. You need to have adequate police resources to do that. Have that coupled with criminal forfeiture and I think you're OK.

The Chair: One more question.

Mr Kormos: In that regard, I'm listening to people and my sense is that if you really are—maybe it's just my TV imagination running rampant—some huge crime lord, and this law is passed, you're going to make sure your assets are wherever people like that put them: Cayman Islands, not to be unfair to Cayman Islands. Reference has been made that all the little operators, the little nickel-and-dime dealers—that's not unfair—are going to be the easy targets for this type of legislation. Is that a fair observation?

Dr Beare: It certainly is my belief, that that is the person you are going to target. Again, the legislation as it's drafted doesn't talk about organized crime or whatever. You're going to get the welfare frauds. You're going to get the vulnerable little person, the person who either cannot or will not or doesn't have the resources to fight, to intimidate the state into withdrawing from their intention. It's not going to untangle these big, organized criminal operations.

Mr Tilson: I have a brief question and then Mr Hastings has a question.

Just to clarify, I can assure you that there is no reverse onus clause in this legislation. Categorically, there is no reverse onus clause. I just wanted to make that clear to you because you seemed to be—

Dr Beare: So if I am not charged and you seize my house based on the balance of probabilities—

Mr Tilson: I'm not going to debate it with you. I'm telling you that we've had the Attorney General and we've had a staff person from the Ministry of the Attorney General come here today and say there is no reverse onus clause. I have one question for you. I don't want to get into an argument with you. I'm just telling you that's what's been said today.

My question is with respect to helping victims, with respect to preventing injury to the public. You are a lawyer, correct?

Dr Beare: No.

Mr Tilson: You're not a lawyer?

Dr Beare: No, I'm not.

Mr Tilson: Good for you. Can you tell us what remedies you believe the province does have with respect to dealing with organized crime?

Dr Beare: I thought your question was going in the opposite direction. In terms of remedies regarding organized crime, again, when we think of organized crime, a lot of organized crime does not in fact have victims. Chief Fantino was talking about drugs. A lot of it is consensual. You can get into a debate that obviously there are some consequences of those activities. But in terms of financial frauds and things like that, is that the kind of restitution areas you're talking about?

Mr Tilson: I'm just asking for your observations.

Dr Beare: Again, in terms of your question regarding remedies for organized crime, I think it's still the criminal court that we should be going to.

Mr Hastings: Ms Beare, do you understand why this legislation is here? I think people from the law community don't meet with the people from the enforcement community. My thesis would be that one of the reasons this legislation is here is because of the extra-high standard of "beyond a reasonable doubt" in the criminal law when you're dealing with the seizure of property, when in point of fact there seems to be little endeavour from the feds, particularly in a number of areas—money laundering, immigration smuggling, telemarketing and commercial-corporate fraud right across the globe.

It seems to me, then, you believe that the criminal approach, with its high standard of "beyond a reasonable

doubt," is more than sufficient to deal with the so-called mythical—you haven't ascribed that, but I get an impression that you think Fantino's approach is a little overdone, that it's not as organized and not as comprehensive as it is from what I can see and what I've read and what I've seen with a few people in my office just in the whole area of telemarketing who have been defrauded, and not just seniors. Could you focus on that?

1540

Dr Beare: Those activities that you mentioned are very serious, but our system of justice in Canada has been one where you find people guilty of them. You build a good case, you charge the person, and then again, with proceeds-of-crime legislation in place, you take away their proceeds. If in fact it is a criminal organization, you do it on that rather than a balance of probabilities where you haven't even brought a charge. As Chief Fantino explained, you possibly have very little involvement by the police community. Yes, you do save up resources so that the police can go off and do something else, but that's unlike traditional justice in Canada. It's remarkably different than anything we have had.

Mr Hastings: I just have a different perspective, I guess, than you do on traditional justice in this country.

The Chair: Thank you, Mr Hastings, and thank you very much for coming in, Dr Beare.

ADVOCATES' SOCIETY

The Chair: The next speaker is Anthony Moustacalis, member of the criminal law committee, the Advocates' Society. Good afternoon.

Mr Anthony Moustacalis: Good afternoon.

Just a quick response: there is no reverse onus in the legislation. As a criminal lawyer, reverse onus refers to the onus being on the accused person, the defendant, to establish their innocence, as it were. This legislation makes it clear that the burden of proof is on the applicant, who's the Attorney General, on a balance of probabilities, which is a low standard but is still a recognized legal standard.

But I'm here on behalf of the Advocates' Society essentially to go over some concerns that our committee has with the legislative scheme. I've presented an outline of that submission with particular areas of concern; really, there are five.

I take it from what I've heard from members or other people making submissions that several of these have been covered. I'm not going to touch too much on the constitutional problems. Obviously when there's a scheme put forward that covers potentially criminal activity, then it might be open to scrutiny under both the Charter of Rights as well as plain constitutional rights. My focus is going to be more on the balance of the particular concerns which I've got listed there.

When I say "Overlap with federal scheme," I've filed with my submission copies of the Criminal Code section that at least outlines what crimes are covered by the proceeds-of-crime, enterprise-crime type of legislation

that the federal government has in the Criminal Code, as well as under the Controlled Drugs and Substances Act. Essentially, for anything that's significant, murder down to theft, those types of activities are covered. Similarly, although simple possession of drugs is not, anything related to sale, cultivation, and so forth of narcotics is covered and those proceeds can be seized. So there is an overlap with that, and what we mean by an overlap really ties in with my fifth point, which is that there is a potential conflict therefore as to what scheme should be used by the police.

For instance, one of the potential difficulties may be that depending on which police force is looking to solve a problem—let's say there's a drug transaction where the police want to attack the proceeds. Do they go under the Criminal Code? If it's the OPP, are they going to be more inclined to use this legislation to do that? Is the Solicitor General going to direct that this legislation gets priority over the Criminal Code? What if it's the RCMP? And, lastly, what if it's a municipal organization? So there's a potential conflict as to what scheme should be used by the police.

Our other main significant concern is number 3, which is that it's really too broadly defined and there is potential for abuse. As I've outlined in italics, under part II of this legislation, section 2 defines "unlawful activity" to include essentially breach of a provincial offence, any type of provincial offence. Not to appear ridiculous, but being a lawyer I looked at the beekeepers' act. If you sell bees without a licence, that's an offence and potentially could come under scrutiny in this case. We would all hope that a responsible Attorney General, being responsible to the Legislature, would be criticized roundly by the public for something like that. But the question becomes, where do you draw the line as to what type of activity comes under scrutiny, considering it covers any type of provincial offence? For instance, if a restaurateur is charged under the Liquor Licence Act repeatedly, they could lose their restaurant potentially. That would be covered under unlawful activity. In other words, it's very broad, and that in itself means it could be subject to legal scrutiny and challenge.

I should mention that our organization has over 2,000 lawyers, who cover the gamut from representing victims, representing persons who are charged, as well as people in the justice system, such as crown attorneys and so forth.

The next concern and the next section that I have is subsection 6(3). Essentially that says that when the money is taken, the Minister of Finance can provide compensation to victims of crime. Part V of the Family Law Act is referred to. I understand that is, for instance, relatives of people who have been harmed traditionally can sue civilly and obtain damages. But this scheme doesn't provide for any itemization or indication as to how much would be paid, whether it would be equal to what could be recovered from somebody suing civilly. Is it going to be tied in to the criminal injuries compensation type of rate, where the maximum is \$25,000?

I'll give an example from a colleague who had a situation where a father was found not criminally responsible for killing his spouse. He then conducted a lawsuit on behalf of the surviving children and recovered over \$300,000 on their behalf because he had assets and so forth. Is that person still going to be in a position to sue and recover damages in that amount under this legislation? It's not clear, and that's a potential difficulty for victims.

If I can refer to the last page of my submission, you will note that "Proof of offences," section 17 of the legislation, indicates that "proof that a person was convicted, found guilty or found not criminally responsible on account of mental disorder," is proof that a person committed the offence. Again, in my notes to you I note that this may create unfairness by including mental disorder and may limit the recovery. I have already given an example of how a recovery might be limited by a person seeking damages against someone who is found not criminally responsible.

When we talk about how it may create unfairness by including mental disorder, that's really I guess a legislative judgment call, that persons in that situation should be covered by this scheme. I just point that out as to whether that's something that is fair or not.

Those are essentially the submissions I wanted to make.

Mr Rosen, who is supposed to come after me on behalf of the Canadian Bar Association, wanted me to extend his apologies and regrets. Their organization wasn't able to develop a submission that they wanted to put forward at this time, so he won't be coming. I guess that's the good news, that you've got a break after me.

The Chair: Thank you very much, Mr Moustacalis. Questions, Mr Kormos?

Mr Kormos: No, thanks.

The Chair: The government?

Mr Tilson: I'll ask you the question I asked the last witness, who I thought was a lawyer, and she wasn't.

Mr Kormos: And you never apologized.

Mr Tilson: You are critical of the legislation. My question is, what remedies does the province have in dealing with organized crime, specifically when we're concerned with assisting victims and assisting members of the public? I understand that there are charter issues and constitutional issues. Those have been referred to by lawyers, and I'm sure before these hearings are out there will be other lawyers who will come and talk about the charter and the Constitution and whatever else they can talk about. But from your perspective, as a representative of the Advocates' Society, can you tell us what remedies the province does have?

1550

Mr Moustacalis: Not directly but indirectly the province has remedies through their own agents—the crowns, the police prosecuting matters and using the Criminal Code provisions for proceeds of crime and enterprise crime. It's not my mandate to indicate what changes could be made, but there are other pieces of legislation,

like the Highway Traffic Act, to use a simple example, which provides for seizure of motor vehicles by the police for people who are driving under a suspension for a second or third time, whatever it is. So there could be something structured in such a way that it's not so broad that it covers everything, but it's aimed at more specific groups of organized crime in that context. I don't really want to go beyond that and speak personally as opposed to who I'm here for, but those are the sorts of areas that could be pursued. Our mandate in reviewing this is to point out some of the difficulties that we see as lawyers with experience in litigation in a broad area, including representing victims, prosecutors and defence attorneys.

Mr Tilson: Not getting into a legal debate, but your comments did talk about the overlap between the Criminal Code and this bill. This bill has been addressed by the Attorney General and by a staff person from the Attorney General's office, who have said that this bill deals specifically with property issues whereas the Criminal Code deals specifically with penal provisions on these types of matters. In this bill there are no penal provisions.

Mr Moustacalis: That's correct.

Mr Tilson: Having said that, do you still feel the same way?

Mr Moustacalis: Yes, I do, but because of what I talked about, the overlap. I still don't think that resolves the conflict over what scheme the police should use in a situation where there is a crime and charges are going to be laid. Perhaps if there isn't a crime, then I think the other problem with the legislation is that it is very broadly defined and can cover too much and has the potential for abuse there, as I mentioned.

Mr Hastings: Mr Moustacalis, thank you for coming. How would you strengthen, then, or reinvigorate the unlawful activity section so that it's tightened, creates the objectives in the bill, realizes them, but doesn't produce the unintended consequences the other way, some of those other offences that you can get charged with under the Highway Traffic Act and so on?

Mr Moustacalis: Again, that's kind of outside my mandate here, but to answer your question and not to avoid it, as a lawyer, there are a number of ways of approaching these issues. For instance, certain pieces of legislation that target serious offences like securities legislation for insider trading fraud—that's provincial legislation—or legislation for environmental offences could have these provisions put in them.

Mr Hastings: It should be spelled out specifically?

Mr Moustacalis: Yes, or it could say, "This applies to the following breaches of the following pieces of provincial legislation," for example.

Mr Hastings: Could you briefly elaborate upon what you alluded to earlier about the potential policy conflict among the various police forces in the administration or the implementation of this legislation?

Mr Moustacalis: Let's say you're a police officer and you've come across a crime; let's say a sale of drugs. In the second attachment I've given there's a copy of the

Controlled Drugs and Substances Act, which says that if you sell drugs, then any profit or anything related to that can be seized. It's also an unlawful activity under this legislation, which means that you could advise the Attorney General that you've come across an unlawful activity and does the Attorney General want to bring an application to seize that money? What do you do as a police officer when you're faced with that? Presumably if you're with the OPP, maybe the Solicitor General might give you a standing directive that says, "When you come across these situations, let us know so that the Attorney General can bring an application." But if it's a drug matter, then ordinarily that would be something dealt with by the federal Department of Justice prosecutors, who might want to get their hands on that money. That's what I'm talking about when I say there could be a conflict over which scheme a police officer would use. It's not clearly spelled out and you do have a definite overlap between both of those areas, in my submission.

Mr Bryant: If the act works as the ministry wants it to work, there's a flood of litigation using this bill off to the civil courts. Would that not necessarily mean, given the backlog right now, that we're going to need some assistance on the side of providing resources to civil courts?

Mr Moustacalis: I would think so, yes, because as you mention, the civil courts are busy. There's always a concern about access to justice. There's obviously going to have to be some forms developed for the Attorney General to bring these applications. The legislation does provide for notice, obviously, to affected parties. It does say that the Attorney General has a choice as to whether he or she brings the action by way of an action or an application. What that means practically is that an action means you end up having discoveries and it prolongs the procedure. An application is a document that's brought with affidavits so you don't go through as much rigmarole. But still it's going to add, obviously, to the impact; how much, I guess, depends on how aggressive the Attorney General's office is in bringing these applications.

Mr Bryant: Actually, nobody has talked about the division of powers. The Canadian Civil Liberties Union just dealt with the charter. As has been said, there are always going to be challenges with new legislation, but my concern is that all this time and money is going to be spent on legislation that just gets struck down because it intrudes in federal jurisdiction, if in fact it does. Is this a big concern or is this a hypothetical concern with this legislation?

Mr Moustacalis: I think the best I can say on behalf of the Advocates' Society is that we felt it was a concern. Unfortunately, we didn't canvass it in as much detail as we would have liked, but we're aware of the general principles. As we all know, the federal government has jurisdiction over criminal law, the province over property and civil rights, but the federal government has sort of occupied the field here as far as proceeds with respect to criminal law, so they would have priority. Secondly, the

Supreme Court of Canada has said that when the Department of Justice wants to prosecute, they can take over any type of prosecution or case over the province. Those are some of the principles that are going to come into conflict that we would identify.

Mr Bryant: Back to conflicts again, you talked about the conflict between the use of the civil remedies, as envisioned in this bill, and the criminal remedies under the Criminal Code. As you know, the Attorney General's ministry has a civil department, if you like, and a criminal side. Can you imagine there actually being a conflict with the Ministry of the Attorney General whereby the civil folks are saying to the criminal folks, "No, don't prosecute because we can do it easier on the civil side"?

Mr Moustacalis: I suppose that's a possibility. They would probably work out their own protocols as to when to do those things or not, but it will require a liaison and that is a good point as well. Much as I pointed out that the police would have some conflict over how to use the scheme, they might have some difficulty. But in fairness to them, they have good lawyers there and they would figure out a protocol.

Mr Bryant: But they're going to need one; they're going to need some kind of protocol. I agree, they have great lawyers there, but they're going to need some kind of protocol.

Mr Moustacalis: That's right.

The Chair: Thank you very much, Mr Moustacalis, for coming in this afternoon.

KROLL LINDQUIST AVEY

The Chair: The last speaker for the day is Mr Roddy Allan, principal of Kroll Lindquist Avey. Thank you for coming in a bit earlier to fill in for the next timeslot, Mr Allan.

Mr Roddy Allan: I have a relatively brief submission or presentation to make to you today. That's perhaps appropriate as I'm the last person.

I'm a principal in a firm that's involved with forensic accounting matters. Often we are involved with civil and criminal fraud investigations and consequently we have some insights on very practical issues that might come to the fore on implementation of the proposed act. I'm going to stay well away from legalistic issues, as I'm not qualified to comment upon them.

I'm going to stick to three relatively straightforward and practical issues for your consideration, as follows. I'm going to talk briefly about the linkages I've described between unlawful activity and property, the resources required to establish that link and the related costs, and also some issues related to compensation that might be payable to victims under the act which I think are worthy of consideration.

1600

On my reading of the act, the bill seeks to prevent retention of property acquired as a result of unlawful activity, proceeds being defined as property acquired directly or indirectly as a result of unlawful activity.

There are obviously provisions for forfeiture or preservation of that. The drafting of the bill creates a need to establish the linkage or relationship between the unlawful activity that's being investigated and the property that results from it. The question arises, how do you establish that linkage?

Organized crime is a business, and it's run as a business by the people who operate it. That business must be understood fully, firstly to determine that it's unlawful activity or that unlawful activity is taking place, and secondly to determine the cash flows or the benefits that are resulting from that business.

In its simplest form, the direct linkage is quite simple. For example, unlawful activity takes place and funds are deposited into a bank account. It's relatively straightforward to establish that those are the proceeds of that activity. In a simple example, an illegal telemarketing operation solicits cheques from its victims and the funds are deposited into a bank account.

Unfortunately, the reality is that some of the investigations that are going to provide evidence for proceedings under the bill are a little more involved, particularly when we talk about indirect linkages. What I mean by that is situations where unlawful activity takes place and proceeds or some other form of consideration is created. Money may be laundered through a number of bank accounts. It may be used to make related-party transactions. It may be manipulated in any number of ways before it becomes engendered in the types of property that you are seeking to forfeit or preserve under the act.

Advancements in technology and communications have made instantaneous transfers of money and other assets through multiple jurisdictions very easy. Consequently, on a very practical level, there are significant complexities in effectively investigating complex, as opposed to simple, organized crime business.

Notwithstanding the ease with which property or other assets can be moved around, there are other complicating factors. For example, if a business is being conducted which contains a mixture of lawful and unlawful elements, how do you separate the unlawful proceeds from the lawful ones?

Secondly, unusual transactions may take place in the unorganized crime environment which would further obfuscate the trail of where the benefit from that unlawful activity is going; for example, barter transactions, lending transactions and things of that nature.

Finally, poor or incomplete business records would significantly hinder an investigation.

Just to give you an example from our firm's experience and my personal experience, our firm was retained on behalf of a US agency to investigate a very large illegal telemarketing operation in Toronto that was preying on elderly US citizens. Those citizens were solicited by telephone to provide Visa or other credit card numbers, and the resulting slips that were written up by the telemarketer were shipped to Australia for processing through a front company which deducted a 30% commission for processing the money. The money was then

redirected through a number of other entities, through Mauritius, and ultimately back to Ontario, where it was used to purchase racehorses, houses, cars, you name it.

In that simple example, you can see that in the more sophisticated organized crime business, creating a direct or an indirect linkage between the actual activity, on the one hand, and the proceeds, on the other, can be quite involved.

The reason I bring this to your attention is that I think that for the police and the lawyers who will be taking this legislation forward and working with it, creating that indirect linkage may be a disincentive to take on some of the more complex cases.

In my attendance at the organized crime summit that Minister Flaherty organized in August last year, one of the overriding themes was that different types of expertise must be brought to bear in order to create those linkages and make the investigations happen. My conclusion on the issue of linking property and proceeds is that, to the extent possible, if there's any facility to allow for additional expertise to be brought to bear in these types of investigations, I think that would actually assist in expediting certain provisions of the act.

The police, in our firm's experience, are not provided the necessary training to deal with the most complex cases. Unfortunately, neither are they provided the budgets required to retain that outside expertise. As the proposed act does not have what I would describe as a reverse onus provision, the onus is definitely on the investigative agency to establish the connection between property and unlawful activity. What I mean by "reverse onus" is the proposition that was discussed at the summit I mentioned earlier that property be seized and it be incumbent upon the owner of that property to prove that it was obtained by legitimate means. So my suggestion to you is that a proper investigation of the complex, as opposed to straightforward, organized crime may not be accomplished without some additional expert input.

This takes me to my second point, concerning the use of forfeited property. One of the uses of forfeited property envisaged in the act is to make payments to victims, which is clearly a very worthwhile activity. There are other provisions as well, including one to make payments to compensate the crown for pecuniary losses suffered either as a result of the unlawful activity itself or in commencing the actual proceeding. These expenses are not defined. My suggestion is that they ought to be defined as reasonable expenses in order to provide the greatest possible scope for repayment to victims.

However, it's also likely that in some cases, for example in drug cases, no victims will come forward, for obvious reasons. By broadening the definition of "reasonable expenses," it may be possible to remove some of the disincentive I mentioned earlier in taking on the more complex cases. For example, if reasonable expenses were to include reasonable investigative expenses with the approval of the Minister of Finance, then that might provide some additional resources to police in the more complex cases. I should add that this is not self-

serving. Our firm has plenty of work and we're not looking for it through this mechanism.

Finally, I'd like to talk briefly about compensation that may be paid to victims. There are some housekeeping points that I think are worthy of consideration, either as part of the act or as part of any accompanying regulations.

The proposed bill provides for compensation to be paid to victims who suffer pecuniary or non-pecuniary losses. Those losses may be straightforward. For example, if there has been adequate investigation of the unlawful organized crime business, there may be financial information from that business that would identify victims and establish what they may have taken from them. Getting back to my telemarketing example, telemarketers keep lists of the people who provide them the greatest money, so those records may be readily available. However, the act doesn't provide for situations where the property forfeited is not sufficient to pay all victims. So my suggestion would be that it provide, or any accompanying regulation provide, for a pro rata distribution in that circumstance.

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Secondly, there does not appear to be a limiting clause in terms of the amount of compensation that might be paid. For example, in the event that consequential losses were suffered, as opposed to an immediate and direct loss, there's no provision stating whether that would be included within the compensation scheme or not.

Thirdly, I'd also suggest that any accompanying regulations, or the act itself, should provide for proper and thorough authentication procedures to validate any claims that may be made. I'm sure that when the first successful case is made under this act there will be many people who will come forward seeking compensation, and it would be worthwhile to have an appropriate process in place to validate those claims.

To recap, I think the drafting of the bill as it's currently presented does create potentially some disincentive to take on the more complex cases where proceeds may be quite far removed from the original unlawful activity. Secondly, subject to reasonability and approval from the minister, it might be worthwhile to consider if investigative costs could be funded from the returns from seizure of property, as long as that doesn't impair significantly the repayment of funds to victims. Thirdly, some further clarity or supplementary regulation is required in connection with the definition and terms governing payment or compensation to victims. That's essentially my submission to you today.

The Chair: Thank you very much, Mr Allan. Mr Hastings.

Mr Hastings: Sir, thank you for coming in. You made a pretty interesting point about reasonable expenses to cover investigative costs. We had a couple of earlier people submit that there would probably be very few people come forward under the victim category, in especially the drug situation.

I'd like to ask you if you think the term "victim" should be assigned to more than just an individual or a family or a group of people; that it could be widened to include a neighbourhood, especially when you take into consideration Chief Fantino's contention that, in the case of drugs at least, the poorest neighbourhoods are usually the biggest victims of this kind of activity in terms of the distribution networks. I'm wondering what your thoughts would be as to whether a definition of "neighbourhood" could be put into the regs or a policy if they were ever to have distribution of the funds coming from this bill.

Mr Allan: I think there are two parts to my answer on that question. You mentioned that your expectation might be that in many cases victims would not come forward—

Mr Hastings: This was a contention from a previous presenter.

Mr Allan: Right. I think that depends very much on the type of unlawful activity. My own experience is related very much to illegal telemarketing. Information relating to victims was readily available and making repayment to those victims was not problematic, which in fact happened in two cases that we had in British Columbia, which was very satisfying.

As to the definition of a neighbourhood as a victim, I think the more you broaden the definition of "victim," the more problematic it becomes to determine the amount that ought to be paid. Maybe it's just my training as an accountant, but I'm not sure how I would quantify the amount that ought properly to be paid to a neighbourhood because there has been an ongoing level of drug activity there. I think there is a clause within the act, and I'm sorry I don't remember it exactly, that speaks to victims of a specific activity who suffer pecuniary or non-pecuniary losses. Then there's a further clause which talks about other victims in a broader sense. That may be the clause that can be explored in the situation you're describing.

Mr Bryant: Thank you for coming. How does it work right now in Ontario for these investigations under the Criminal Code? Are forensic accountants, say from your firm or other firms, retained, or is it all done internally, or is it a bit of both?

Mr Allan: It depends what you're talking about. We do a lot of just regular corporate fraud stuff. That's how I make my living.

Mr Bryant: Yes.

Mr Allan: The police forces have people in-house. Typically, these are people who are on secondment from firms similar to mine. Based on my understanding of it, which is second-hand information from the police, people I know, these in-house people are swamped with work. For example, if I were to go to them with a client who had a very large, complex fraud and say, "Are you able to investigate that?" usually the response is, "No, we can't because it's too complex" or, secondly, "Yes, we can, but it's going to be a year, 18 months, before we get to it," which is not much use to the victim.

In the organized crime element, as opposed to the regular corporate fraud element, there may be fewer re-

sources, but there is that hurdle. I think it's an impediment to getting to the bottom of what has happened and clearing up the situation. We see it all the time. If those impediments weren't there, then I'd be doing something else for a living. I'm very busy, so that tells me there's something that's not right.

One point I should clarify is that when I talk about reasonable expenses of investigation, that could be police expenses as opposed to retaining an outside firm, such as ours or one of our competitors, for example, if they had to draw somebody else into their group, maybe it's overtime or maybe it's just something else, to get over that hump and get away from this issue of exceeding tight budgets, which are in operation today for police forces. It's too bad something like that would get in the way of making this work.

Mr Bryant: My question is, if on the law enforcement side we need, but we don't have, an army of forensic accountants and they're overworked and overburdened right now, on the flip side to it, I take it organized crime does have an army of forensic accountants arranging their affairs, which makes it complicated for police?

Mr Allan: They have a lot of people who are making sophisticated arrangements to manage the funds that are obtained as a result of their activity, absolutely. In the summit that occurred last August, I believe I was the only forensic accountant who attended. I just sat at the back and listened very carefully. Almost without exception, the speakers got up one after the other—Commissioner Zaccardelli, who's now head of the RCMP and at that time was assistant commissioner, was very strong on this point, that he needs resources and budgets and the capability in order to deal with that problem. Really to reinforce that point was why I came along today.

Mr Bryant: On that front, thank you very much for coming.

Mr Kormos: I seem to recall now the trial of last year, the major fraud, where the Toronto police wouldn't even investigate it, where the victims had to hire their own forensic accountant, Brian Patterson. You remember that? What was that case?

Mr Allan: I don't recall that.

Mr Kormos: The Toronto accountant who scammed a bunch of people, including a couple of high-profile ones, where the judge chastised the police for not undertaking the investigation. That's consistent with what you're saying. My problem is that the police don't even have the resources or the means to investigate the crime. Good grief.

Chief Fantino was here earlier, and he didn't show a whole lot of confidence in the Criminal Code provisions. I wish we had had more time, because, heck, if they can't investigate the crime itself, it would be even more difficult with a sophisticated operation to get down behind it and track down the money.

Mr Allan: I'm sorry, I don't recall that particular case, but there are so many of them out there.

Mr Kormos: That the police aren't investigating?

Mr Allan: I don't know what they're investigating and what they're not. I'm not going to answer that one.

There is a distinction between crime and unlawful activity in the corporate environment versus what we're looking at under this bill and the organized crime environment. In the corporate environment, you may have a wealthy corporation that has the financial capability to retain people from outside even after it has been defrauded. You'll do some investigation and take it up to the police with a nice report with a ribbon on it. But in the organized crime environment, where you're dealing with crime which, not exclusively but in large part, is perpetrated against individuals—and certainly I've seen this again in telemarketing, where they've been completely cleaned out by these people—they don't have a capability or a willingness to pony up additional funds to finance any kind of investigation. The difficulty is greater on this side than perhaps it is on the corporate site.

The Chair: Thank you very much for coming here this afternoon, Mr Allan.

That concludes today's proceedings. We will reconvene tomorrow morning at 10 am in committee room 1, which for the purpose of anyone—

Mr Kormos: No television coverage?

Mr Tilson: On a point of order, Madam Chair: My understanding is that that has been changed and we will be meeting in this room, but I trust you'll be talking to the Chair, Mr Beaubien, and that—

Interjections.

Mr Tilson: Mr Kormos agrees with me.

The Chair: OK.

Mr Tilson: Madam Chair, we will find it, but my understanding is that this committee will be in this room.

The Chair: OK. What I will do, members of committee, is, I will check with the other Chair and I will let each office know.

Mr Kormos: It's in one or the other.

The Chair: It's in one or the other.

Mr Tilson: I agree with Mr Kormos.

The Chair: Unless you hear from me otherwise, it will be in this room tomorrow morning. Thank you. Meeting adjourned.

The committee adjourned at 1623.

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Standing committee on justice and social policy

Remedies for Organized Crime
and Other Unlawful
Activities Act, 2000

Comité permanent de la justice et des affaires sociales

Loi de 2000 sur les recours
pour crime organisé
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
JUSTICE AND SOCIAL POLICY

Wednesday 21 February 2001

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE
ET DES AFFAIRES SOCIALES

Wednesday 21 février 2001

*The committee met at 0959 in room 151.*REMEDIES FOR ORGANIZED CRIME
AND OTHER UNLAWFUL
ACTIVITIES ACT, 2000LOI DE 2000 SUR LES RECOURS
POUR CRIME ORGANISÉ
ET AUTRES ACTIVITÉS ILLÉGALES

Consideration of Bill 155, An Act to provide civil remedies for organized crime and other unlawful activities / Projet de loi 155, Loi prévoyant des recours civils pour crime organisé et autres activités illégales.

The Chair (Ms Marilyn Mushinski): I'll call the meeting to order. Good morning, ladies and gentlemen. This is a continuation of the meeting of the standing committee on justice and social policy to consider Bill 155. Gentlemen, if I could please ask you to take your seats as quickly as possible. Bill 155 is An Act to provide civil remedies for organized crime and other unlawful activities.

OFFICE OF THE NASSAU COUNTY
DISTRICT ATTORNEY (NEW YORK)

The Chair: The first deputation this morning is Robert Nigro, assistant district attorney for the Office of the Nassau County District Attorney (New York). Good morning. You have 20 minutes.

Mr Robert Nigro: Good morning. I am the chief of the civil forfeiture unit of the Nassau county district attorney's office, Nassau county, Long Island, New York. For the past 12 years, it's been my job to oversee the prosecution of civil forfeiture actions in Nassau county, a county of approximately 1.6 million people.

In New York state, the way the statute is drafted, it's the prosecutors of criminal wrongdoing who become the claiming authorities, those charged with the responsibility of bringing the civil actions. So my practice is primarily in civil court, but I am a member of the district attorney's staff. It's one of the rare instances where a state prosecutor is given civil authority. It's exclusively felony criminal conduct, although prosecutions are not always necessary. In reality, virtually all of our cases are based on someone's criminal prosecution and ultimate conviction. It's only in those rare instances, and only in

drug cases, where if there is no identifiable individual defendant, if we can make out a case for criminal wrongdoing by clear and convincing evidence, we can predicate a forfeiture on that. That happens in situations where the defendant may have fled or in one or two instances where the defendant is deceased. We can still maintain our civil actions and prove our case by clear and convincing evidence.

Our statute, unlike the statute that you're proposing here, is in personam. It's a rarity in US law as well. What we go after is a person's interest in property; we don't go after the property itself. This gives us a very great latitude in what we can attach and, when they ask us, what we can go after. It permits us to get a judgment against the individual, and that judgment, by New York law, can be satisfied out of virtually any of the property that they may own. That way, if they've passed the proceeds of a crime through their hands on to others, but they have assets from other sources, those other assets can be used to satisfy the judgment. It makes it a much more effective tool. It also avoids the necessity of having to track particular property to its ultimate location.

But still, the judgment is based upon us having to prove how much money they made in a criminal enterprise. That remains our burden and that's where we are put to our proof and we have to gather the appropriate evidence.

As I said, it's a very powerful tool, and we have to be very careful in the way that we use it. We are constantly vigilant and we guard against potential abuses. We don't want to be accused of having sold a disposition in a criminal case for an increased amount of money in a forfeiture action, or that we have prosecuted an unworthy criminal case just for the purposes of trying to make some money out of it. Those are the things we are very concerned about and those are the things we don't allow to happen in our office.

We term it the excellent second punch in a one-two combination against criminals. It takes the money out of the criminal equation and it's an effective economic disincentive. It also leads to an erosion of a criminal enterprise from within. For example, it removes the seed money. We do a lot of forfeiture actions against illegal gambling businesses. These are usually organized-crime-related, if not actually run by them. But the money they make in that, they use in other areas. That money, if it's taken in forfeiture, is not available for those other things.

It's not used for loan sharking; it's not used for drugs or the seed money for another enterprise.

We have actually watched in our own courtroom as the captains of an OC group show up to hand envelopes of cash to their soldiers to pay off their forfeiture actions. What this does is, the money which goes up the ladder now has to come back down the ladder and it's taken by the government and it's lost to the criminal enterprise. It's not a thing that's going to break the back of organized crime, certainly, but it does have an effect.

We've noticed that certain illegal businesses have been driven out of Nassau county. We no longer have as many, or any that we can locate presently, wire rooms doing illegal gambling in our county. They prefer to be outside our county. Other things: for example, we go after those "legitimate"—and I use the quotation marks to indicate that it's not really legitimate—businesses that are fronts for other illegal businesses. For example, the nail shops which were prevalent in our county, which were just a front for prostitution, no longer exist because we cleaned them back out to the walls. We take all the business's accoutrements, and when they are no longer available, they leave the county. A pawnshop where an individual may have been swapping diamonds for zircons, we took the entire store. In one location they were selling forged autographs of sports figures; we took the entire store. Those businesses are gone. They will think twice before setting up again in Nassau county. They are small examples but it is, in our small area, an effective way of doing it.

Vehicles are another large part of what we do, and they're not done for the money, because vehicles are a loss leader. They cost more to deal with than they are worth. But if we look at our obligations, one of our obligations is to safeguard our community by taking these vehicles off the street, whether they are used by drug dealers or drunk drivers. They are a dangerous instrument on the street, and it's an obvious sign of criminal wealth. When the Jaguar and the Mercedes-Benz of the drug dealer are no longer in the hands of the drug dealers but in the hands of the police, it makes a very important statement. It does go far, we've noticed, in reducing the negative effect of crime on particular neighbourhoods where we emphasize the use of forfeiture in conjunction with diligent police work.

To give you an idea of some of our statistics, although they would not be equated to what you might have in this province if you had a forfeiture law, between January 1997 and December 2000, our unit dispersed a total of \$5,191,704 to crime victims, various state and local agencies and our own office, as required by statute. In the last 15 years it's over \$13 million we've taken in. We in our office had access to \$1.889 million over the four years. We share part of that with the state, to go back into the general fund, which goes to use for other purposes.

One of the biggest recipients of forfeiture in New York state is the Office of Alcoholism and Substance Abuse Services. In the last four years they have received \$1.5 million from us. This money goes back and is used

throughout the state for drug treatment and drug education programs.

Our law is unique in the sense that it particularly provides for money taken in forfeiture to go back to victims, but not only to victims of the crime for which the defendant was convicted but victims of any crime of that defendant. So victims are a high priority for our statute, and over the last four years \$225,000 went back to victims. That doesn't seem like a very big figure, but when you consider the number of gambling cases and drug cases where there are no obvious victims, although society certainly does suffer, in those cases the money is divided up between the state and local agencies, the district attorney's office, the police department and, as I said, the Office of Alcoholism and Substance Abuse Services.

We also auction off a lot of the property we seize. Over the last four years we have auctioned off 148 vehicles, including boats, motorcycles, cars and trucks, and about \$400,000 was gained from those sales. We also take a number of the vehicles and put them into service. We have undercover vehicles, from tow trucks to coffee trucks to expensive cars, that are now on the roads, not paid for out of government monies but provided gratis by the forfeiture program, and they are used for a variety of purposes. It provides a vehicle that the criminal defendant otherwise wouldn't see. It's not the usual Dodge Diplomat or Ford Crown Victoria that the police use; it could be a Titan motorcycle or it could be a souped-up car of one form or another, and they are very effective. But since you didn't put any money into obtaining them, you can use them once or twice and then you can sell them and gain the money back from that.

We've had a large number of cases from different parts of the country. We've recently had a case where a defendant was driving through Arkansas, was stopped by the police and was found to have 250 pounds of marijuana in his vehicle. That vehicle was allowed to travel on to Nassau county, where it met up again with the marijuana, delivered to a location in Nassau county. The individuals met the vehicle. They had \$250,000 in cash in their residence. Their residence was attached. It was ultimately not forfeited as part of the negotiation, but they served up \$425,000 in forfeiture and now a large marijuana dealer in Nassau county is out of business.

We have other cases of a similar nature, a lot of gambling cases which, as I say, have had a very great effect on that criminal practice in Nassau county.

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I am reminded of the line from a movie where an individual was using Wall Street—in fact Wall Street was the name of the movie—to illegally gain money. An old individual in the backroom tells him, "There's a funny thing about money. It makes you do things." That's the one watchword we have in my office: you don't do it for the money. The money is good, it's a measure of how successful you are, but the money is not the reason. The reason we do this is because it's an excellent way of removing one of the—it's not going to stop homicides,

it's not going to stop assaults of one form or another, but it is going to go after those crimes that are based on economic incentives and it's very effective.

I realize my 20 minutes are not up, but if there are any questions I'd be glad to answer them.

The Chair: There is time for a couple of questions from each side. Mr Caplan, do you have any questions at this time?

Mr David Caplan (Don Valley East): Not at this time.

Mr Peter Kormos (Niagara Centre): Thanks for coming up here. Are you using state legislation or federal legislation?

Mr Nigro: We use both. We use the state legislation because my district attorney feels that the ability to turn back a third of it to the state for drug treatment programs is very useful. With federal forfeiture money, he can only use a portion of that for social programs, which he does, but that's limited by federal law. So we prefer to use state forfeiture law and we use that almost exclusively.

Mr Kormos: The federal legislation we're referring to colloquially here is the RICO legislation. Is that correct?

Mr Nigro: There is RICO both on the federal and state levels. We have our state RICO component, which has a forfeiture aspect to it as well, which is not used as often. Federal RICO is one portion of federal forfeiture, but you have federal criminal forfeiture and you have federal civil forfeiture. That's the one that recently underwent some changes with the recent CAFRA legislation this past year.

Mr Kormos: I want to understand you. I got the impression that it was only in drug cases that you didn't need a forfeiture process based on a conviction.

Mr Nigro: We don't need a conviction as a predicate. We have what are called pre-conviction and post-conviction forfeitures. The pre-conviction is on drugs. "Pre" means "not"; we don't really need a conviction. The best example is, we are litigating against the estate of a deceased drug dealer who committed suicide while incarcerated. He can't be convicted, although we can prove from the evidence we garnered in the investigation that he was a drug dealer of cocaine for a long period of time. He has an estate of approximately \$1 million. We can't convict him but we can certainly continue to go after that estate and then forfeit that money.

Mr Kormos: Is the need for a conviction problematic from your perspective?

Mr Nigro: No. Virtually all our cases are based on a conviction. My office looks at it that the primary responsibility of the district attorney is criminal prosecution, and the forfeiture is an adjunct to that. We don't let our forfeitures control our prosecutions, but our prosecutions can certainly control the forfeiture. I liken it to the tail of the dog. That's the head, and the tail follows where the head leads.

Mr Kormos: We're grateful that you and some of your colleagues have come up here, because the standard is clear and convincing evidence—

Mr Nigro: Without a prosecution, yes, it is.

Mr Kormos: —which I understand is higher than the standard on a balance of probabilities. I don't know if that's American jargon or not.

Mr Nigro: I've heard disputes about that, but that's the generally accepted position, that it is a higher burden of proof than what we would call the preponderance of the evidence.

Mr Kormos: Again, has that been problematic for you?

Mr Nigro: Not so far. We haven't litigated very many, but no one in New York has litigated very many of these because they are resolved in conjunction with the criminal prosecution. This one, because there is no prosecution, will either be settled or tried. We feel we have the ability—we start with the idea that we've got to build a case beyond a reasonable doubt against a criminal defendant. When you no longer have that, the "clear and convincing" is easier to meet. So we have "proof beyond a reasonable doubt"; to be able to provide the "clear and convincing" is not going to be difficult.

Mr Kormos: It's a policy issue, then, for Nassau county to have decided to use "clear and convincing" only in drug cases when there is no conviction?

Mr Nigro: No. That's dictated by the facts of the case. For example, if we had a case against an individual who absconded and we couldn't convict him, we would fall back to the "clear and convincing" burden of proof as the necessary standard for that forfeiture.

Mr Kormos: What if an accused had, for whatever reason, been found not guilty by a court, simply not guilty? Would you then pursue it on a "clear and convincing" standard?

Mr Nigro: Technically you could. The question that remains is, why was there not a conviction? Was the evidence suppressed? If it was suppressed in that case, it probably would be suppressed in our case. Was the individual in fact not guilty? If we don't believe there is evidence of guilt and that clear and convincing evidence is not going to be met, we wouldn't continue with the forfeiture. But there are conditions in situations where someone could be found not guilty or their guilt is not proven beyond a reasonable doubt where we still could prove a case by clear and convincing evidence. If that case arose we would examine those facts and, if necessary, continue with the forfeiture.

Mr Kormos: Has that been very frequent in your experience?

Mr Nigro: No. We had one case where the federal authorities stepped over us and took a criminal case and the individual was convicted on the criminal side in this federal venue. Then our case was dismissed but we continued with the forfeiture case.

Mr Kormos: You're restricted to Nassau county in terms of crimes committed in Nassau county or felons who reside in Nassau county or assets in Nassau county.

Mr Nigro: Yes. The claiming authority's authority comes out of the ability to prosecute the criminal action in his county. But in a pre-conviction case—for example, where you had a conspiracy that would be prosecutable

in Nassau county—you could then bring a forfeiture action in Nassau county. You may not have an actual completed crime in Nassau county, as far as a substantive crime, but you have conspiracy or intent. You could then prosecute the forfeiture in Nassau county.

Mr David Tilson (Dufferin-Peel-Wellington-Grey):

This is our second day of hearings where we've had different types of people come and make comments for and against our legislation. Some of the criticism of Ontario's proposed legislation is that it's going to give the police too much power and it's going to give the politicians too much power. I don't really agree with that. The gist of their presentations seems to be, "We understand that you're trying to deal with organized crime, but you're going beyond that with your forfeiture and seizure provisions. This will affect the good citizen, the average citizen, and there will be an abuse of power by the police and an abuse of power by the Attorney General." Has this issue been discussed?

Mr Nigro: That's a constant concern, and it's a criticism we don't reject out of hand. We always have to be concerned, any time you apply the criminal law or any law that deprives someone of their rights or property, that it be fairly enforced. The potential is there, even with the average criminal statute, that if someone has an evil motive, they can misuse it.

Forfeiture is the same way, but you still have to do it in the courts. We're not seizing property; we have no seizure ability in our forfeiture. We have the ability to go to a court and ask for an order of attachment, which we can do ex parte. But within five days it becomes adversarial and it's litigated. We have no more authority than the courts will give us. We're put to our proof before the courts, and the courts authorize us to do this.

I think we've had one or two attachments not granted in 15 years and only one overturned by an appellate court. They're primarily like search warrants. You have to go in and show the court that you have reason to believe this person is committing these crimes, that there's a likelihood someone will be convicted or that we can prove the requisite elements for a conviction in a particular case before they'll give you the authority, plus you have to show how much money they've made, and that analysis has to be fleshed out before the court. So it's not likely that the police will decide, "Let's target this individual," and go and take their property. They'd have to get the collusion of the court and the collusion of the prosecutor. It wouldn't be feasible, and I don't think it's likely to happen.

Mr Tilson: I appreciate those comments and I appreciate your coming and telling us the success your jurisdiction has had.

Yesterday, we had the Toronto Police Services Board; indeed, the chief of police of Toronto came and indicated his support for the legislation and indicated that it will be part of a number of tools that police organizations and the Attorney General will be able to use in dealing with organized crime.

Obviously our concern is that we have jurisdiction between the federal government and the provincial gov-

ernment. Criminal matters are dealt with by the federal government under the Criminal Code, and we deal with property matters, where this legislation is geared. I thought I picked up some comments about organized crime coming from other jurisdictions into your jurisdiction and the seizure of those assets that may have been brought into your jurisdiction. Did you say that?

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Mr Nigro: I said they were driving in the other direction, but you do get criminals coming in from other jurisdictions. If you make it unhealthy and unproductive for them to stay, they won't. But it's not so much that this is a pass-through. We have found that certain things, like the large-scale marijuana dealers, will not set up a stash house in Nassau county. One, the real estate values are just too high. It's easier to park the drugs in adjacent New York City, Queens county or Suffolk county, which is a little more rural, and bring them into Nassau county.

We had a very large marijuana dealer who we're currently litigating against—that's the individual who was prosecuted federally. He lived outside Nassau county but did a lot of his business within Nassau county. He would drive through and bring his product in. We now have attached eight pieces of property in the city of New York—he had very large real estate holdings. We've gone outside our county to attach those assets and divest him of virtually everything he had gained through this enterprise. He was never a Nassau county resident, he never located his drugs there, but he did do business there and we were able to reach out and take that which was dear to him.

The Chair: Thank you very much, Mr Nigro, for coming in this morning.

Mr Nigro: You're very welcome.

ONTARIO PROVINCIAL POLICE

The Chair: The next delegate is Vaughn Collins, Deputy Commissioner of the Office of the Provincial Commanders, Investigations/Organized Crime unit. Good morning.

Mr Vaughn Collins: Good morning. My name is Vaughn Collins. I'm the deputy commissioner of investigations/organized crime for the Ontario Provincial Police. I've taken the liberty of bringing Detective Inspector Don Perron. He's an OPP officer who is currently in charge of the RCMP Toronto integrated proceeds of crime unit. I have him available, if we have time, should the panel wish to ask some questions in regard to some of the relationship between that piece of legislation and what we're talking about today.

Thank you for allowing me the opportunity to attend this meeting to give you a brief overview of organized crime, its impact, the commitment of the OPP to work with our partners to combat that issue and the need for innovative tools such as Bill 155.

At the outset, let me say that the OPP supports the need for legislation such as we're talking about here. The public, the media and police communities have recently

expressed concerns with respect to gaps in legislation which seemingly allow organized criminals to continue to profit from criminal activities, to intimidate communities and to expand their sphere of power and wealth with few, if any, penalties.

Organized crime has capitalized on unlimited resources and rapid advances in technology to establish itself in all areas of Ontario. Combating organized crime has become a major priority for law enforcement in Ontario. It's a priority for the OPP. We have recognized this and recently created a new command structure with a focus on organized crime.

Some people may not be aware that one of the mandates of the OPP is to provide specialized investigative supports to municipal police services. Additionally, we coordinate many provincial investigative initiatives and joint forces operations targeting high-level organized criminals.

Over the past 15 years there has been a dramatic increase in the number of established criminal organizations in Canada. Their primary goal is the acquisition of wealth and the pursuit of power. Organized crime activities affect the lives of all Canadians, socially and economically. The average citizen would probably identify the crimes of drug trafficking and illegal gaming as associated with organized crime groups. Today, organized crime groups are involved in a wide range of criminal activities which include money laundering, prostitution, illegal immigration, alcohol, tobacco and weapons smuggling, securities fraud, credit card fraud, document fraud and telemarketing, to name a few.

These groups make huge profits from their crimes. Estimates to date are as high as \$17 billion across the country annually. They carry out their criminal activities unhindered by many of the jurisdictional burdens, legal restrictions and resource limitations that we encounter in law enforcement.

Organized crime groups launder their criminal assets through a web of accountants, lawyers and seemingly legitimate businesses. This provides staggering challenges to investigators, forensic accountants and crown attorneys who attempt to link criminal proceeds to those organized crime groups and their members.

Legitimizing illegal proceeds permits criminal expansion from the illicit into the legitimate economy and therefore extends the scope of criminal influence and power to the extent that sophisticated criminal organizations can become or get to the point where they're untouchable.

In 1989, Parliament recognized that the seizure of profits was necessary in the fight against organized criminals. They amended the Criminal Code so that illicit profits could be seized and restrained, and forfeited following conviction. Unfortunately, the legislation is limited to enterprise crime, designated drug, customs and excise offenses only. There are some interesting comparisons between the federal legislation and Bill 155. A seizure or restraint application under the Criminal Code requires the Attorney General to sign an undertaking prior to seizing the assets. Such an undertaking is not

required under the proposed bill, and from a practical perspective this streamlines the process for us in terms of seizing and restraining issues.

The criminal proceeds of crime legislation requires a conviction of a substantive offence before forfeiture. In comparison, Bill 155 would allow forfeiture without a charge being laid. It would allow for the confiscation of third-party properties such as businesses that are being used by organized crime groups to hide criminal profits. This is an important strategy, in my view, to dismantle complex criminal organizations and to thwart their efforts to hide behind ventures posing as legitimate businesses. In my opinion, it is one of the key points in the legislation.

Findings of fact in proceedings under Bill 155 shall be made on the balance of probabilities. Federal proceeds of crime legislation demands a higher standard of proof, that being beyond a reasonable doubt. The higher level of proof in the criminal process demands greater effort on the part of the crowns and the police to successfully prosecute.

In regard to "instruments of unlawful activity," the proposed legislation is providing a caveat similar to the Controlled Drugs and Substances Act and the anti-gang legislation of "offence related property." What this means is that you don't have to prove that the property was obtained by proceeds of crime; you only have to demonstrate that the property is facilitating a criminal activity. This is not available currently in a criminal proceeds of crime investigation when the substantive offence is an "enterprise crime offence."

In both pieces of legislation there is a provision to compensate victims who suffer losses from unlawful activities. The chances of recovery for those victims, I believe, are much greater in the civil process because of the issue of no criminal charges being required and a lower burden of proof on the balance of probabilities. I suggest that the civil process has the opportunity to step forward, or the government does, on behalf of those victims in situations where many of the victims wouldn't have the ability or the finances to do it themselves.

The province of Ontario currently has a process to distribute and share the funds resulting from criminal forfeitures. The proceeds of crime grant program is established to ensure equitable distribution and access of monies derived from those forfeitures, and the civil legislation would provide the ability also for municipal corporations, public bodies and the province to recover losses incurred as a result of criminal activities. This will provide an opportunity for police services to recover the costs associated with their participation in Bill 155, which in turn will encourage its use.

The focus of the proposed legislation is that it relates to any illegally obtained assets by any person. This sends a strong message that states, "Crime doesn't pay," for anyone who engages in unlawful activity. Bill 155 will arm the police with an additional option to remove profits from criminals where a criminal proceeding potentially has or may fail.

There are a couple of concerns I would like to comment on. I believe that the police will be the custodians of information relied upon to identify targets and to initiate a civil action under this bill. In my view, it's necessary to have a mechanism in place that protects the integrity of ongoing parallel criminal investigations.

In many instances the police will have control of the information or be the originator of the information. In the fight against organized crime we often make use of information from intelligence files, informants, agents and other confidential sources. These set the basis for our investigations. Obviously, this would also be the basis upon which many criminal targets would be identified for this legislation to be used. We are concerned that the use of that kind of information could inadvertently open the doors to information that should not be revealed, endangering individuals, exposing police techniques or other investigations in progress. Without some kind of assurances that such information would be protected, we would be reluctant to identify targets for the legislation to apply to.

If there is a police component to the actions coming from Bill 155 it's reasonable to assume that we'll be called upon to provide resources. I can't imagine how the legislative would go forward without some involvement of the police in the future, and the obvious concern is then the draw on the resources of the police service. It makes us somewhat nervous; our resources are already stretched in the battle against organized crime, so we would want to have a better understanding of the impact of engaging in this on police resources.

To try and close quickly, Bill 155 is an initiative that complements the Ontario organized crime strategy. I believe it will assist in taking the profit out of crime and limit the opportunities of organized criminals to achieve profits through illegal activities. I applaud the government for this latest initiative and I thank you for the opportunity to speak with you today.

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The Chair: Thank you very much, Mr Collins. Mr Kormos, do you have any questions? We have about nine minutes, three minutes each.

Mr Kormos: Again, you may or may not know that all of our constituency offices are on the phone to Phone-Busters, for instance, and other facets of what you do on a pretty regular basis, so we're familiar, at least I am, with that impact on our communities.

I'm interested in two things in particular; one, because we haven't heard a whole lot about the experience with the 1989 amendments to the Criminal Code, the federal provisions for forfeiture of proceeds of crime. Dr Beare, from the Nathanson Centre for the Study of Organized Crime and Corruption, was here yesterday saying that Ontario is the province that has used that legislation the least. That was all she said; she didn't provide statistics or numbers. Do you have any stats or any familiarity with where Ontario ranks in terms of utilizing those sections of the Criminal Code as compared to other provinces?

Mr Collins: Yes. I will ask Inspector Perron to answer briefly also. There are two entities in the province that

essentially do this work: the federal-led initiative, which the inspector managers at the RCMP have resources engaged in, and we in the OPP have about 16 people full-time at this currently, under the criminal legislation. We are about to enhance that to include support funding and a more collaborative effort with many of our other municipal police colleagues. We will be doing some of that work also, so the actual activity is increasing.

In terms of how it relates to the rest of the country, perhaps Don will have an idea.

Mr Don Perron: I'm not in a position to compare our statistics with other provinces. I really don't know how well they've been faring at applying the legislation.

Mr Kormos: Can you then give us a sense of what has been the experience with the team, I presume, of lawyers and investigators who are doing the federal Criminal Code applications? What's been the experience? Have we got any numbers about how much has been forfeited over the course of a year or two years or five years, or even just a general idea?

Mr Perron: As far as the federal initiatives, I have not been made privy to the numbers they have. I just arrived on the unit there about a month ago. As far as the OPP is concerned, we've been in existence since 1997 and I'd say we average anywhere from \$3 million to \$6 million a year that is seized as proceeds of crime. You can practically say that half of that is based on drug proceeds investigations and half are enterprise crime investigations.

Mr Kormos: That's utilizing the forfeiture provisions of the Criminal Code—

Mr Perron: That is correct.

Mr Kormos:—as compared to court-ordered simply as a part of the process in terms of evidence that's seized.

My modest experience with this suggests that—and you refer to this, sir—the investigation of this level of crime is very labour-intensive, it's very high-tech-intensive. You're doing stuff like surveillance, infiltration; you're conducting investigations sometimes over very lengthy periods of time. My modest experience is that when there are gaps, when there are breaks in that surveillance, that is when there are weaknesses perhaps from time to time in a crown attorney's case in the prosecution.

You talked about the already stretched resources. I want you to talk about that a little bit. What could you do if you had specific allocations and, more significantly, if you were able to specifically target—if you could say to this government or any other, "Give us X number of resources so that we can go after those telemarketers," which, as you know and I know, hit old people, hit very vulnerable people. What would you need to do and how could you strategize that?

Mr Collins: That's a pretty broad question, Mr Kormos.

Mr Kormos: I know.

The Chair: You've got about 20 seconds.

Mr Collins: And I have 20 seconds to answer.

Mr Kormos: Oh, you've got all the time you want.

Mr Collins: I don't expect that we would ever be able to match the resources of the organized crime people

we're tackling within policing. There is a direct relationship to the amount of investment made in enforcement and prosecution to the potential effects. Examples of units that have been successful would suggest that, yes, they're expensive and, yes, we could use more resources. I can't put a number to it.

Mr Kormos: That's not very encouraging, is it?

Mr Collins: No, it isn't. I'll give you a quick example. In terms of outlaw motorcycle gang activity in this province and the recent changes in the Hells Angels, which is I think creating some concerns, we're looking at probably 200 Hells Angels in Ontario. Each of those operates in a cell with up to about 10 direct people reporting to them. You're looking at a criminal organization overnight that you can identify with 2,000 criminals actively engaged in Ontario, and that is only at the top end. To attack something like that, as you said, complex investigations require resources, funding and expertise. How many of those 2,000 people could we attack with the resources we have? So we do what we can with the resources we're given and we have some successes. What we really need, sir, is additional tools in the toolkit, and I think that's what we're talking about today.

Mr Tilson: I have met with pretty well all of the chiefs of police and police officers, Ontario Provincial Police people, in my riding, which is a semi-rural, urban riding, and I discovered that there is a bike gang out in the countryside owning some property. I don't think they cause a great deal of trouble but they're there. It got me thinking, because a lot of the comments that come from police agencies and lawyers who talk about organized crime, talk about organized crime as being in the cities, in the urban areas. As the representative with the Ontario Provincial Police, can you tell the committee whether organized crime is limited to urban areas? Is it just a Toronto problem?

Mr Collins: No, I don't believe it's strictly a Toronto problem. Obviously where the economy is the strongest, where the resources are, that will attract a number of people essentially. One would expect to see some of this in an urban environment. But it is widespread and its impacts are broader than that.

I was reading recently in the paper about crack cocaine being sold across the street from a high school in downtown Barrie. Having some knowledge that that comes from an organized crime group shows an impact that is outside the city of Toronto. There are outlaw motorcycle gang clubhouses and activity in rural Ontario. There is more and more often organized crime making use of the quiet corners of rural Ontario to do hydroponic marijuana growing, with people they hire and fund to do that. There are those examples and many more, sir, that would suggest this is not just a big-city issue.

Mr Tilson: I know you were in the room when the first speaker spoke, Mr Nigro, an assistant district attorney in New York. I'm interested in suggestions for improving the legislation. Dealing specifically with section 15 of the bill—and I don't know whether either of you have had an opportunity to look at the bill. Section

15 talks about the special purpose account and lists off where payments can be made out of the account to victims to compensate the crown, to compensate municipal corporations etc. I was interested in his comments about how seized and forfeited pieces of equipment—vehicles, boats—are indeed being used now to fight organized crime. I don't know whether you've had a chance to look at that section as to whether or not you believe that section should be made any broader to assist police in the fight against organized crime, appreciating the restrictions, the jurisdictional problems that the province has.

Mr Collins: The section appears to me to be fairly broad, although not likely as broad an application as one sees in the American example from the earlier years where police agencies that seized a vehicle from a drug dealer would be driving it the next day in some cases and potentially using it for other purposes.

There's always a dilemma in terms of, what is the motivator for the police agency engaged in this? Is it strictly the seizure of the goods or is it for the greater good, which we all should be working on, and that's in terms of putting these organizations out of business. So I think you have to be somewhat careful about how it's done.

However, what is encouraging about that section to me is the potential for some of the resources to come more directly back to policing, and I'm talking about the resource issues here, and I certainly think that first the victims need to be compensated and the government should be looking after them.

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Second, if the resources of the police, agency or the prosecution group are not flowed back through into the ministry or the agency that does it, there is a disincentive to continue to put more resources into that kind of work, because what you're really doing is taking police resources—pressure to have a uniform presence on the street, as an example—and putting them into specialist work and the one spot goes vacant.

I see potential for some of this to flow back in through to the police and I'm encouraged by that.

The Chair: Mr Caplan, you have about a minute. Sorry, they took your time.

Mr Caplan: We'll get them back for that some later time.

Commission Collins, thank you very much for your presentation. You've been talking quite a bit about the resourcing available. Back in the May budget, about a year ago, there was an announcement of a fund of about \$4 million. Has that money flowed?

Mr Collins: Some of it has.

Mr Caplan: But has it all?

Mr Collins: It's flowing, is perhaps a better word. Announcements are good things and we encourage them. The money is flowing in. For example, in the proceeds-of-crime unit in the OPP that I talked about, some of that money was to go into supporting other police resources to work on that, and they are coming to do it. But setting

up the systems and getting the equipment and people trained takes time. So that is occurring, and some portion of that \$4 million you talked about has already flowed into that and other things.

Mr Caplan: How much?

Mr Collins: As I understand it from the Solicitor General's side of the House, half of that money came our way. It is all being flowed into a variety of different initiatives. That's one that I just spoke about.

Mr Caplan: It's been announced several times. But it's been budgeted for for almost a year now, so the money is there.

Mr Collins: The money is there. We're putting things in place.

Mr Caplan: About half is unspent? Is that what you're saying?

Mr Collins: I'm not certain if there is money unspent or where it's at in terms of that.

Mr Caplan: Thank you.

The Chair: Thank you very much, Mr Collins, for coming in this morning.

NIAGARA REGIONAL POLICE SERVICE

The Chair: The next presenter is Chief Gary Nicholls, Niagara Regional Police Service. Good morning, Chief.

Mr Gary Nicholls: Good morning. I would ask Inspector Beaulieu if he could join me, Madam Chair.

The Chair: Certainly.

Mr Nicholls: Recognizing the time constraint, I apologize at the outset for perhaps moving very quickly through the significant volume of information, but I think it important that I shed some light on it specific to my jurisdiction and Mr Kormos's jurisdiction, the Niagara region.

Let me say at the outset that I am very grateful to you and wish to thank you for the opportunity to address the committee today. I am speaking on behalf of my community. I feel it is very important that members of the standing committee gain some insight into the very real challenges that exist in investigations of organized criminal activity and enforcement. I will try and be brief, but I want to capitalize on this time with you to address in general terms the impact of organized crime in Niagara. I also wish to speak specifically about the impact of outlaw motorcycle gang activity, including the anticipated impact of the expansion of the Hells Angels motorcycle gang in the province of Ontario and specifically in Niagara. I also wish to address the presence and impact of traditional organized crime in Niagara.

Organized criminal groups operating in Niagara and elsewhere in the province are engaged in a complex range of illegal activity. You have heard much of that. Despite the varied nature of the crimes, a common theme exists in the motivation for organized criminal activity. The commission of all organized crime, in my view, is motivated by greed. Where there is potential for profit and the acquisition of assets and wealth, there is the potential for participation of organized criminals to in-

volve themselves in an extensive list of unlawful activity. Without the potential for profit, the involvement of organized crime would be, in my view, non-existent.

The Niagara region provides a unique opportunity and fertile ground for the continued advancement of organized crime. These opportunities present a significant challenge for law enforcement in Niagara and include the following: the region's four major border crossings; access across international waterways; the region's position between major Canadian and American centres; the existence of a world-renowned tourist industry attracting millions of visitors annually; the casino in Niagara Falls; the prevalence of exotic night clubs attracting a US clientele; and the existence of both well-established and newly established outlaw motorcycle gangs with extreme potential for rivalry, conflict, encroachment and violence.

I wish to briefly capsule some of the highlights and some of the more prevalent organized crime activity experienced in Niagara. This list is by no means exhaustive.

Drug trafficking, as we've heard this morning and perhaps yesterday, is a significant component of organized crime. There are several organized crime groups involved in this activity, not the least of which are the biker gangs and the members of traditional organized crime.

Niagara is often central to and a common denominator in organized-crime drug trafficking and drug importation schemes through our proximity to the US border.

Increased activity of organized people-smuggling into the United States is prevalent among organized crime members.

Organized crime involvement in contraband smuggling through the US border into Canada is ongoing and specific to liquor and cigarettes among just a couple. An example is 40,000 cases of American liquor valued at US\$8.4 million seized at the Niagara crossing. We see potential for a resurgence in cigarette smuggling with the anticipated rise in price.

A dramatic increase in organized crime interests in vehicle theft has been referenced, and we are experiencing that as well in Niagara. Generally auto theft incidents have doubled since 1980, and during the same time period theft recovery rates have declined proportionately. Declining recovery rates are a clear indication to us that organized crime is participating in this activity in regard to the dismantling of motor vehicles and the transfer of stolen vehicles and re-registering them for their use out of province and in fact internationally.

Illegal gaming and related activities, including gambling machines and loansharking, are prevalent in Niagara, particularly among members of traditional organized crime.

An Eastern European organized crime influence in Niagara has been linked to drug trafficking, gambling, gaming offences and prostitution mostly operated through legitimate business fronts.

Counterfeit offenses have risen dramatically in Niagara, specifically in and around the casino.

Organized child pornography distribution and importation has been experienced, as evidenced with increased seizures of child pornography materials at the border crossings.

These activities in Niagara and indeed elsewhere in the province have had a direct impact on our daily lives. I would be remiss if I did not comment on more significant, yet overlooked social costs attributed to the commission of these crimes, particularly drug trafficking. There are substantial long-term consequences in health care, labour productivity, enforcement costs, the negative impact on the potential of our youth, drug-related property and street-level crimes, and particularly the violence potential in the desperation and the disoriented state of drug users who commit crimes. The total impact of organized crime literally, in my view, serves to undermine Canada's future.

The Niagara Regional Police Service, and indeed the entire law enforcement community in Ontario, also share a deep concern over the violence potential that has been, and will continue to be, demonstrated by rival organized crime factions, in particular motorcycle gangs, in their struggle for control. This is a key public safety issue affecting the liberty and security of all law-abiding citizens and a direct consequence of organized crime activity. The propensity for violence among the more prominent organized crime groups cannot be understated. We've witnessed that here in Canada.

In Niagara we have endured the existence of a long-standing motorcycle gang and they exist today. We foresee some conflict with the resurgence of the Hells Angels in Niagara. We have had a number of investigations involving the local motorcycle gang that currently exists in Niagara, and I think it's a demonstration that we have been unsuccessful in our efforts in eradicating this organized Outlaws Motorcycle Club in Niagara despite some significant successes that we've had along the way with traditional criminal investigations.

The investigation of criminal activity, as has been reported, is very labour-intensive. Although investigations are always successful to varying degrees, apart from resulting in the incarceration of select criminal members for brief periods, the well-established and entrenched illegal activities carry on with new faces and new members almost without pause.

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In Niagara, as I've mentioned, we have had the infiltration of the notorious Hells Angels. They come with unlimited financial support. They will be attaching themselves to the local club, we believe. That is a potential for significant conflict in our particular jurisdiction. Certainly, we expect that there will be a negative impact on crime in general and an increased level of organized crime activity in our region as a result. Over the past few months in Hamilton and Niagara we have witnessed this expansion, and it has been ambitious.

I want to speak specifically as well about some activity with regard to traditional organized crime. We have been, in some cases, very successful in our endeavours in

this regard. But again, although we have had some success, our success has been limited to the extent that we have not been successful in eradicating it. Our hopes of eradication are limited indeed.

As the chief of police in Niagara, I am very proud and want to report to this committee that we have been a leader and a committed supporter of traditional criminal legislation directed at seizing and obtaining lawful forfeiture and proceeds since May 1996. We have had some successes, Mr Kormos, in that regard. We are in a position to report briefly on that. But as I say, we are considered a model in Canada, for that matter, in working with the RCMP locally in that specific regard. We have two investigators working with two RCMP investigators, and we have been very successful. So what we are hoping for is your encouragement with this particular legislation as a support to current criminal legislation that we have utilized and will continue to utilize in Niagara.

I wish to comment on the relative investigation in Niagara using traditional law enforcement methods to combat organized crime. They have been well reported in the media, but in May 1997, a well-known traditional organized crime figure was murdered in Hamilton. Shortly thereafter, in July, an associate of his was also murdered in his home in Niagara Falls. The investigations were very quickly linked, and we began a joint investigation with Hamilton, Halton, the Ontario Provincial Police and the RCMP in a multi-jurisdictional task force called Project Expiate.

We were very successful in that endeavour, but it took a two-year investigation with resources that stretched us to the max. It culminated in the arrest and conviction of three members of traditional organized crime, which is not something that's easily done, I can tell you. We solved, with that particular investigation, three execution-style murders and some ancillary offences. But I can tell you that even though we were awarded the Award of Excellence by the Criminal Intelligence Service Canada, we did not manage to deal with the root cause and motivation of these murders. It was indeed a battle for money and a battle for control. It continues and will continue as long as we are unable to eradicate organized crime as best we possibly can with every conceivable tool.

Again, we in Niagara would want to encourage this committee to give serious consideration to this legislation. We've talked about the extremely labour-intensive and expensive terms of the application of resources and employing effective strategies to ensure success. As well, we want to continue to target organized crime in a much more effective manner. What we are dealing with as far as Bill 155, we believe, is an internationally recognized law enforcement strategy in causing permanent disruption and indeed permanent dismantling of some criminal organizations. Taking the profit out of crime is the key to disrupting organized criminal enterprises and networks.

We see Bill 155 as a unique perspective in attacking it from the civil remedies, civil application. We see it as a proven strategy. I was interested to hear Mr Nigro's

comments this morning. We see it as a proven and unique approach, but relatively uncharted in Canada. It has been reported as well that the level of proof is reduced, allowing us to deal with a level of proof required less than criminal law. In addition, the rules governing admissibility of evidence in civil matters are reduced, resulting in a more level playing field for police and prosecutors. These factors give rise to a stronger likelihood and higher probability of success in certain cases by utilizing civil process as opposed to traditional efforts with the criminal process.

We want to suggest that the main focus in Bill 155 should allow for law enforcement to be more effective and efficient in reducing the opportunity for profit. These challenges are not easily accomplished in the application of criminal law, given the extensive resources and personnel that are dedicated to the integrated proceeds of crime unit in Niagara and elsewhere in the province.

I sincerely believe the law enforcement community in Ontario applauds and adamantly supports any legislative initiative that will add to our repertoire of investigative strategies. We see Bill 155 as an important tool in our ongoing battle against organized crime. It is with great respect that we recommend to this committee and urge you to endorse the provisions of Bill 155.

I hope this information, although lengthy—and I apologize again for that—has been helpful in allowing you to give serious consideration to advancing this piece of legislation.

The Chair: Thank you very much, Chief Nicholls. There's time for one question from each party.

Mr Tilson: The burden-of-proof issue has surfaced throughout the hearings. Some of the civil rights lawyers have been critical of it and said we should be using "beyond a reasonable doubt." Other people have indicated their support for the burden of proof that's put forward. I forget—

Mr Nicholls: "Balance of probabilities."

Mr Tilson: "Balance of probabilities," which is spelled out in one of the sections. I don't know too much about the American burden of proof. We've had Mr Nigro come and talk a little bit about it, but we do know there's another burden of proof that's somewhere in between. You referred to it, but can you elaborate a little more where you stand on the burden of proof?

Mr Nicholls: Certainly, Mr Tilson. We will continue to use the criminal process, because we have been successful. We see it as a very legitimate process in our efforts. But where the burden of proof is "beyond a reasonable doubt," we have had significant difficulty putting those cases together with our crown attorneys. They have been difficult to the extreme, but we have been relatively successful.

We see the burden of proof that is lower than "beyond a reasonable doubt," the "balance of probabilities," as a viable option, at least from my perspective, given the fact that, as Mr Nigro reported earlier this morning, it is put before the court. It is nonetheless a civil process that is put before the courts, and I think that process encourages

a very rigorous review of all the evidence. But in fact it is a lesser evidence, given the fact we're dealing with property crimes and not an individual's liberty. So I accept it as legitimate. I encourage the committee to deal with it in that respect, because it's appropriate in circumstances dealing with property issues.

The Chair: Mr Caplan.

Mr Caplan: Thank you, Madam Chair. Chief Nicholls being from Niagara, I think it's only fair to allow Mr Kormos to ask a question, being that it's probably his own time. I'll pass it over to Mr Kormos.

Mr Kormos: Thank you kindly, Mr Caplan. Particularly, I know Chief Nicholls and Inspector Beaulieu very well, and for a long time too. I'm very pleased with the new chief's appointment late last year.

I'm pleased to hear about the utilization of the Criminal Code provisions and about Niagara being very much in the leadership. What's been the success rate of defence by the persons being targeted? What's been your experience in that regard?

Mr Nicholls: Perhaps the inspector can speak to that. I can tell you that I think the defence against that legislation has been somewhat significant. If we were holding our own, I think that's perhaps the best we can do in these matters. Specifically to the criminal cases that have been put before the courts without success—Gary, I don't know whether you can speak to that.

Mr Gary Beaulieu: When we're fortunate enough to take a case before the criminal court and it's put to a defence, we've been very successful at that stage. The unfortunate part for law enforcement is that many of our cases, which we feel are very strong, simply don't reach that threshold where we can advance it in a criminal case and in many cases charges aren't laid under those circumstances. That's where this particular legislation may be useful as another tool for us.

Mr Kormos: I have no doubt about the utility. Thank you very much.

The Chair: Thank you, Chief Nicholls and Mr Beaulieu.

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STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY

The Chair: The next presenter is Paul Zoubek, First Assistant Attorney General of New Jersey, USA. Good morning. Thank you for coming up.

Mr Paul Zoubek: Good morning. It's a pleasure to be here. Thank you, members of the committee. I appreciate the opportunity to speak before you today and share the New Jersey experience concerning civil asset forfeiture, particularly in the context of organized crime.

If I can step back for a second, I'm First Assistant Attorney General of the state of New Jersey. The way in which our law enforcement is structured in the state of New Jersey, we have 21 separate counties, and by statute the Attorney General is the chief law enforcement officer

of the state and can set guidelines and procedures pursuant to statute for each of the county prosecutors' offices that may be involved in forfeiture actions. The Attorney General's office has separate law enforcement powers and a separate state grand jury that it can utilize in conjunction with civil forfeiture.

As you've heard from a number of speakers already, organized crime is a multi-billion dollar industry that has a devastating effect on legitimate economic enterprise by diverting money from lawful commerce while rewarding and financing ongoing illegal activity.

How do we best attack such crime? One of the ways we do so is by trying to take the profit out of that kind of crime. Asset forfeiture can destroy the money base necessary for the continuation of illegal enterprises and serves to attack the economic incentive to engage in organized criminal activity. It also deters individuals from using their property to facilitate criminal activity. Perhaps best of all, it rededicates the money from illegal activity to the public good.

New Jersey's civil asset forfeiture law is one of the most comprehensive forfeiture statutes in the United States. In essence, it provides for the seizure, by law enforcement, of any cash and property having a direct link to an indictable criminal activity. Like the statute this committee is considering, we deal with two basic kinds of asset forfeiture that we're looking at. One involves the instrumentality of crime and the second is the proceeds of crime.

Under our system, the seizure can be triggered in two ways: immediately upon seizure of contraband, such as weapons or drugs on site, by a police officer where there are criminal charges filed; where no criminal prosecution is immediately contemplated, the seizure can only occur on approval of our trial court level judge known as a Superior Court judge. Under our New Jersey law, the state has 90 days, once a seizure is made, to initiate a formal forfeiture action. This is done by filing a verified complaint with the civil part of the local trial court.

One of the things that makes our civil forfeiture statute unique is that unlike laws in many states, the application of our law is not limited to specific offences such as narcotics, money laundering or illegal gambling. In New Jersey the statute enables us to seek forfeiture of cash and property in the case of any indictable offence, felony offence, where we can establish by a preponderance of the evidence that there is a direct and substantial link between those assets and the crime. In contrast to the Nassau county experience, the New York experience, our statute is what is referred to as an *in rem* property statute, not an *in personam* statute that addresses a person's interest in an asset. We are going after the asset itself. The statute also provides that all civil forfeiture proceeds will be redistributed exclusively for law enforcement purposes.

With the power that New Jersey's forfeiture statute provides, namely ability to take away cash and property in the possession of another, even where it is a criminal, there obviously are significant property rights in mind and we need to be responsible in the way the forfeiture

laws are used and the way they are administered. The ability to seize assets and property carries with it an obligation to be vigilant about possible abuses of discretion, the proper use of forfeiture procedures and prosecutorial overzealousness that may threaten individual freedoms and reinforce the prospect of corruption.

We have established Attorney General guidelines with respect to the use of the forfeiture laws in the state of New Jersey and we have also established a very comprehensive system to oversee the use of those forfeiture funds by law enforcement. I will touch on some of those issues a little bit later and answer questions in that regard, but now I'd like to talk about why we feel that civil forfeiture in New Jersey has evolved into a significant law enforcement tool.

Put simply, civil forfeiture is a means by which we can take the profit out of all types of indictable crime, from drug dealing to fencing stolen property, from loansharking to insurance fraud. From our perspective, this is vital because most crime that is not motivated by passion is motivated by greed. Show me the money, show me the interest of organized crime in New Jersey to make profits. Indeed, if there's one thing we've learned from our experience in law enforcement, it's that lawbreakers often display a remarkable degree of both persistence and inventiveness in the service of their greed. Through civil forfeiture, the ability to take away the proceeds and instrumentalities of crime, we can attack them where it hurts.

Prior to coming to the Attorney General's office in New Jersey, I was a federal prosecutor in the US Attorney's office for a period of time. I remember one defendant who had turned the state's evidence who was testifying for me. He was facing a significant amount of time but, more important, he was facing a significant amount of forfeiture. All the way up until his sentencing he was willing to trade additional time in jail if he could just get more of his property back, property that was acquired by paying off union leaders to rob union workers of their due work by a couple of dollars an hour over a 10-year period. What amazed me was that that individual would sit there, right before he was about to testify in court, and seek to trade, because he had more interest in keeping the proceeds of his crime than necessarily spending a little bit more time in jail.

Through forfeiture we also can make it more difficult for ongoing criminal enterprises to fund themselves as they often do. In New Jersey we have been involved in the fight against traditional organized crime for a number of decades. Indeed, our division of criminal justice in New Jersey was formed in 1970, after there was a *Life* magazine article that focused on the influence of organized crime on businesses and political institutions in New Jersey. It was around that time that the criminal and civil RICO statute was put in place and thereafter a forfeiture statute was put in place to give us the tools to be able to fight organized crime.

Working in partnership with federal authorities, we have been able to decimate a number of traditional La

Cosa Nostra families in New Jersey from an attack not only as it relates to investigating cases in a traditional format, as you talked about in terms of surveillance but, most important, remembering that the way Al Capone was first incarcerated was not by the mighty pistol, not by the mighty work of a surveillance agent; it was by the pencil work of an accountant.

We have worked in New Jersey to develop very sophisticated computer models and computer tracking systems that can put information in about an organized crime group and track their assets. In tracking their assets, you're not going to track them to the LCN bank account at a particular bank; you're going to have to go through a whole labyrinth of shell corporations in order to trace the money.

What we have seen in New Jersey is a transformation—yes, some involvement in illegal betting, some involvement in loansharking—but we have seen the movement of organized crime into otherwise legitimate businesses. When that happens, that really attacks potentially the fabric of the local economy and the fabric of the confidence in institutions in New Jersey. We have utilized asset forfeiture to attack, for example, in New Jersey waste hauling businesses and alleged connections between La Cosa Nostra and some of those businesses. We have used that in a number of cases to go after the assets and proceeds of illegal activity and to seize those illegal proceeds. I can tell you that has an important impact.

We send a message that I think that is powerful through the appropriate use of civil forfeiture: get caught stealing or committing insurance fraud, trafficking in drugs or engaging in other criminal activity for profit and you may lose more than just time. You could lose your car, your home, your business and/or other valuable assets.

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Because they are such valuable assets, you have to have appropriate protections in place, but I had a case in one of the poorest cities in New Jersey in which the chief financial officer of that hospital and two senior members of that hospital, in a period of time in which the hospital could barely afford to pay its nurses and could barely afford equipment, ripped off the hospital for \$8 million. There were a number of members of the community who would drive in their fancy Porsches into Camden, New Jersey, one of the poorest cities in the country, with the ill-gotten gains from their proceeds. It sent a very significant message to that community when the accountants went back and traced the proceeds to the \$1.2-million house acquired by the chief financial officer, which all came from the mouths, potentially, of the patients of that hospital. When that was seized, it sent a very important message to the community. I don't care whether it's in a white-collar sense when you're sending that message or whether you've forfeited the gold Mercedes the drug dealer is using in the neighbourhood to come in each day and poison that particular neighbourhood; the community reacts to those forfeitures when it sees that the individ-

uals who have been flaunting their illegal activity are finally addressed in that fashion. I think it makes an important impact.

We in New Jersey have set up a number of safeguards as they relate to forfeiture. One of the first things we did was set up a wall in all the prosecutors' offices that have both a criminal and civil forfeiture function: there can be no communication between those involved in civil forfeiture actions and those who are involved in criminal actions, to make sure they're not utilizing the information they can gain at a lower threshold and to make sure there's protection of parallel criminal and civil matters.

One of the problems we encountered at times when we put systems in place was related to the utilization of the asset forfeiture dollars. I can tell you, responding to one of the prior speakers' questions, it's only appropriate at a time when we in the States, much like you here in this province, have significant budgetary challenges. We're in this business of law enforcement in organized crime because the organized crime entities and cartels have forced us to do so. What better way to fund, if you will, parts of that fight than with the legal proceeds that have been drawn out from the neighbourhoods and drug dealing or that have been drawn in unfair and illegal competition with legitimate businesses by organized crime that has infiltrated otherwise legitimate businesses, than to put that back into that fight?

That fight can be won, can be successful, if we match technology for technology and if we utilize some of the techniques we have available to us to track their funds. They're smart, but they're not that smart, because they sometimes don't believe we're going to have the perseverance to track through the 55 shell corporations in which they've hidden all their money. But it's a pleasure when that accountant investigator comes out from that room with 50,000 pages of documents, comes out with his list showing that he has established that the proceeds have been traced. One of the things we have found when we file civil forfeiture actions against well-known organized crime entities is that often they are not interested in engaging in the lengthy discovery process that is required, perhaps, for them to establish that their assets were not achieved by legitimate means.

I'm happy to be here. We think this is one of the tools in the toolbox that law enforcement needs to address organized crime. Given some of the things I've even heard here today, I do recommend strongly that the committee consider this bill.

The Chair: Thank you very much, Mr Zoubek. There's time for about one question each.

Mr Caplan: Mr Zoubek, thank you for your presentation today. You mentioned on a number of occasions that in the bill in New Jersey, in the statute in New Jersey, there are appropriate safeguards and protections. You gave one example. In your reading of Bill 155, are there appropriate safeguards and protections against unreasonable forfeiture and seizure?

Mr Zoubek: I think the standards set forth in the bill are appropriate. What we did in New Jersey was that all

the protections are not necessarily set forth in the statute, but rather are guidelines that prosecutors use in administering the statute.

Mr Caplan: So if I could be clear, you don't find any protections in the bill and you hope that at some time some guidelines would be issued?

Mr Zoubek: No, I think I said just the opposite of that. I said I found the bill, in and of itself, in terms of what a statute requires in terms of protections by the standards set forth within it, to have appropriate protections. What I'm saying is that in the administration of law enforcement as it relates to this bill—and what we have done in New Jersey—you're not necessarily going to want to put in a statute how a forfeiture account is administered by a law enforcement agency. That's more in terms of an administrative matter.

Mr Kormos: You are here with Chief Nicholls and Inspector Beaulieu of Niagara Regional Police Service, one of the larger police forces in Ontario and similarly one of the areas, because of its unique geographic location, impacted by organized crime. They talked about having two Niagara regional police investigators and two federal police force investigators working on their forfeiture program under the Criminal Code provisions. Give us a sense of the number of people working on the investigative end and the lawyering end in New Jersey to make this program work on the scale you're talking about.

Mr Zoubek: What we have done in New Jersey, and it partly relates to our role in the Attorney General's office: we have a staff of about half a dozen lawyers dedicated specifically to this and about a dozen investigators. But frankly, what we have utilized is extensive training programs to train local law enforcement to recognize some of the issues that are necessary to do some of these investigations. For law enforcement, in order to get people who can handle the computer and do the computer analysis, are we going to wait and hire everybody out of college to do that? I think part of it is retraining, but one of the things is that an accountant working on these matters can provide significant assistance.

It's important that there is an investment in that specialized kind of investigator, in addition to identifying—for example, we have training programs in place that identify for local police officers what they are to look for during the course of a police stop that may be related to what they need to do when they find \$200,000 in the back seat of a car. If they do the right things on that occasion, it can secure the civil asset forfeiture we need to accomplish.

Mr Wayne Wettlaufer (Kitchener Centre): Thank you for coming this morning and appearing before us. I believe you said that the proceeds of any forfeiture of cash or property in New Jersey are used for law enforcement purposes exclusively.

Mr Zoubek: That's correct.

Mr Wettlaufer: You're aware, I believe, of section 15 of Bill 155, that we will be using some of the proceeds to

compensate victims of unlawful activities. I wonder, first of all, if you could comment on that provision and, secondly, if you could tell us how you compensate victims in New Jersey.

Mr Zoubek: I think that's an excellent proposal in your legislation. When there is a readily identifiable victim and the recompense can be utilized as set forth in this legislation, I think that's important. In New Jersey, in an instance in which there is a theft of, let's say, \$50,000 from an elderly couple through telemarketing fraud or something, there are mechanisms by which that money can be returned to the victims. Our forfeiture statute was addressed more to the generalized crime you may have against the public by organized crime, in which you don't necessarily have an identifiable victim as opposed to the public good being adversely impacted by their attempted control of an institution or by their infecting otherwise legitimate businesses.

I think the portion you have in your legislation that relates to victims is very important. It's important that the defendant's rights in a civil forfeiture case are protected, but we in law enforcement don't often enough remember and ensure there is full and complete compensation to the victim.

The Chair: Thank you very much, Mr Zoubek, for coming this morning.

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US DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION

The Chair: The next presenter is Mr Lawrence D'Orazio, Senior Attorney, Drug Enforcement Administration, USA. Good morning.

Mr Lawrence D'Orazio: Madam Chair and distinguished members of the committee, good morning. Thank you for the opportunity to speak today about asset forfeiture from my agency's perspective.

Asset forfeiture is one of the most important tools in the Drug Enforcement Administration's fight against drug traffickers. My remarks will focus on the central role asset forfeiture plays in that fight. Most Americans agree that criminals, including drug traffickers, should not be allowed to benefit financially from their illegal acts. Our federal law provides that the profits and proceeds of designated crimes, as well as the property used to facilitate certain crimes, are subject to forfeiture.

Asset forfeiture is one of law enforcement's most effective weapons against drug trafficking, because it takes the profit out of the illicit drug trade, thus removing the incentive others may have to commit similar crimes in the future. Not only are the profits of crime taken away from the criminals, but asset forfeiture also dismantles the physical and financial infrastructure essential to the continuing vitality of criminal organizations. Lastly, asset forfeiture provides the means to help victims and to fund law enforcement programs to further combat crime.

Asset forfeiture has been a part of the American legal system jurisprudence since the founding of the nation.

Current federal law contains numerous protections against possible abuse. The process also provides for the protection of innocent parties whose property may have been seized, including banks and other financial institutions that may have a third-party interest in the seized property. Such parties may elect to have the courts consider their interests, or they may seek administrative relief without the need to proceed in court.

Powerful international drug syndicates operate around the world, supplying drugs to American communities, employing thousands of individuals to transport and distribute drugs to American youth. They smuggle tons of cocaine and heroin into the United States and distribute and sell it in communities across the country. As a result of selling their poison, these organizations generate millions, possibly billions, of dollars of US currency as profit. They need to return this profit somehow to Colombia and Mexico. The drug traffickers take money from American citizens who become hooked on drugs. They drain this currency from the American economy and divert it to the personal consumption of a few individuals living outside the country.

Where, in the past, seizures of currency involved in drug cases might have been in the thousands or tens of thousands of dollars, now seizures of bulk amounts of US currency are in the millions of dollars. In the nature of the international drug trade, because of currency transaction reporting requirements, to a large degree illicit profits are no longer laundered through banks but are smuggled in vast amounts out of the US and into foreign hands. Many of DEA's cases involve seizures of these shipments of bulk cash being smuggled outside the United States. The international traffickers isolate themselves from the monies and have the money transported separately from the drugs, oftentimes by couriers who are well paid for their services. In many of these cases, nobody claims ownership of this ill-gotten cash. To do so would be to run the risk of criminal prosecution, so the monies are civilly forfeited.

There are large dollar amounts connected with drug asset forfeiture because of the nature of the drug trade. One example from just one case will illustrate this point. During 1998, in numerous investigations within the United States, DEA worked with federal, state and local law enforcement partners to arrest members of an international drug trafficking syndicate who were operating on US soil. Resulting from a series of co-operative investigations which linked trafficking organizations in Mexico, Colombia and the Dominican Republic to their operatives in various US cities, over 1,200 individuals were arrested. Almost 13 tons of cocaine, two and a half tons of methamphetamine and 127 pounds of heroin were also seized. Almost \$60 million in US currency was seized as a result of that investigation.

Asset forfeiture, civil and criminal, is one of DEA's most powerful weapons against narcotics traffickers. There are several circumstances where civil forfeiture is the most effective method of removing the instrumentalities and profits from narcotics trafficking. Since

criminal forfeiture requires the conviction of the violator, it is not available in cases where the drug trafficker is a fugitive, deceased or resides outside the reach of US extradition laws.

In instances where law enforcement intercepts an illegal money courier with bulk amounts of cash, civil asset forfeiture law enables the DEA to seize and forfeit these illegally obtained assets. The couriers, who either know little about the underlying illegal activity or are told not to ask questions, are paid generously for their services. Couriers are frequently chosen because they have no drug criminal history and are purposely isolated from the underlying illegal activity through an intricate system of cells that make up the structure of the drug trafficking organization. In many cases, the courier denies any knowledge of illegal activity, disavows any ownership interest in the currency, may not be arrested and is free to leave throughout this encounter. Therefore, criminal forfeiture is simply not an option. However, as a result of the investigation, DEA would be able to forfeit that currency after proving by a preponderance of the evidence that the currency either represents the proceeds of narcotic trafficking or was intended as payment for narcotics.

Today's international organized criminal groups are strong, sophisticated and destructive organizations operating on a global scale. They are shadowy figures who send thousands of workers into the United States who answer to them via daily faxes, cellphones and pagers. These syndicate bosses have at their disposal airplanes, vessels, radar, communications equipment and weapons in quantities that rival even some legitimate governments. Whereas previous organized crime leaders were millionaires, the Cali drug traffickers and their Mexican counterparts are billionaires. These enormously wealthy criminals should not be allowed to enjoy the profits of their crimes. Drug trafficking is a crime of greed and is profit-motivated. Asset forfeiture is a vital tool in striking blows at the drug trade at one of its most vulnerable spots: the money. Law enforcement must be able to take the profit out of drug trafficking.

The Drug Enforcement Administration has asset forfeiture investigative groups in nearly all of its field divisions and provides asset forfeiture training to thousands of drug law enforcement officers, both domestic and international. The agency's asset forfeiture program was responsible in fiscal year 1997 for the seizure of cash and other assets totalling \$412 million. In fiscal year 1998, there were more than 7,700 DEA cases, in which over \$351 million in cash and assets was seized. In fiscal year 1999, over 8,000 seizures brought more than \$359 million. In addition to this figure was \$90 million that was the US share from a 1995 case that was repatriated in that year. As part of nearly 8,000 cases in fiscal year 2000, a total of more than \$346 million was seized.

DEA agents across the country, together with our state and local partners, carry out controlled deliveries of the drug shipments they seize. Our operations do not stop with intercepting the drugs or the cash. We use these

seizures to develop information on the trafficking organizations. We follow the cash because it forms a trail to the criminals who transport the drugs. By identifying and arresting members of the transportation cells of drug trafficking organizations, along with the US customers, law enforcement authorities are better positioned to target the command, control and communication of a criminal organization, and arrest its leadership.

Many of our investigations and enforcement operations point to the connection between domestic law enforcement in the United States and the problems posed by international drug trafficking organizations in Mexico. These operations show, as do most of our investigations, that arresting the leaders of international organized crime rings often ultimately begins with a seemingly routine event in the United States. For example, two troopers from the Texas Department of Public Safety performed a traffic violation stop on a van with New York plates on Interstate 30. They became suspicious when they learned that one man was from New York while the other was from El Paso and they were not well acquainted. Neither man owned the van and their stories conflicted regarding where they were going and where they had been. The driver and passenger consented to a search, and the troopers found 99 bundles of money hidden in the vehicle's walls. It took three hours to count the \$2 million in cash.

After receiving an anonymous call, the Tucson Police Department and drug task force officers raided a warehouse containing 5.3 tons of cocaine. The same Texas troopers also stopped a northbound tractor-trailer and seized 2,700 pounds of marijuana. Follow-up investigation connected this interdiction to the previous seizure of money, to the cocaine warehouse in Tucson and to ongoing investigations in various other states.

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These investigations would not be as successful as they were if we did not have asset forfeiture authority. All of these investigations provided our special agents and federal prosecutors with the key to uncover the operations of the Amado Carrillo-Fuentes organization. This powerful Mexican syndicate was apparently using US trucks and employees to transport huge amounts of cocaine to various US destinations. Information learned from the investigation showed that just one Juarez-based organized crime cell shipped over 30 tons of cocaine into American communities and returned over \$100 million in profits to Mexico in less than a two-year period. The resulting investigation, Operation Reciprocity, resulted in 53 arrests and the seizure of more than 7.4 metric tonnes of cocaine, 2,800 pounds of marijuana and \$11.2 million in cash.

Asset forfeiture plays a key role in our most complex investigations, some of which could not take place successfully without this vital tool. The 22 separate DEA, FBI and US Customs investigations in eight separate judicial districts from August 1997 to July 1998 came under the name of Operation Rio Blanco. These investigations led to the identification of the top leaders of a trafficking group operating in the United States, 90

arrests and the seizure of 3,500 kilograms of cocaine and \$15 million in US currency. Working within current legal restrictions, operations such as Rio Blanco can inflict significant damage on drug trafficking organizations.

Aside from traditional drug investigations, asset forfeiture plays a key role in money-laundering investigations as well. Money laundering takes place because the drug lords need to insulate themselves from the drug smuggling in an attempt to avoid criminal prosecution. The traffickers will attempt to obscure the drug profits, making it appear that the money is legitimately gained wealth. DEA's strategy in money-laundering investigations is to direct law enforcement actions not only at the arrest of the violators and seizure of their contraband, but also toward the seizure and forfeiture of their illegally obtained and laundered assets. Asset forfeiture takes the profit out of drug trafficking by seizing laundered money that can be tied to trafficking. There are several examples of successful DEA investigations and operations that have resulted in such seizures.

Operation Dinero was a long-term DEA and IRS money-laundering undercover program initiated by the Atlanta field division in 1994. During the first phase of Dinero, cash transactions and money pickups were used to connect drug trafficking and drug cell money groups in the United States. These pickups were necessary in order for undercover agents to gain greater credibility with the drug trafficking organizations' hierarchy and to establish the traffickers' trust in them to handle large financial transactions. Phase 2 of this operation targeted major drug trafficking accounts and assets. Operation Dinero was concluded with worldwide impact, with the following results: 88 individuals were arrested, nine tons of cocaine was seized, and \$82 million in cash and property was also seized. These results occurred in the United States, Canada, Spain and Italy. Not only was a significant portion of the international drug trafficking organization crippled by the arrests, but a small fortune was denied for those members of the organization who remained at large.

Another example is Operation Skyline, a money-laundering operation directed toward the identification and arrest of members of the Cali Mafia. In 1995, negotiations for money-laundering services had been established and three cash pickups totalling approximately \$250,000 were made. Two of the negotiators stated that they were to organize the laundering of \$1.2 million in cash. These negotiators were arrested and \$540,000 in cash was seized at the time of the arrest.

In a separate investigation under Operation Skyline, a DEA undercover agent in Houston, Texas, had been in extensive telephonic negotiations with a suspect to provide money-laundering services. Uniformed officers stopped the vehicle and recovered approximately \$600,000 in US currency. Both suspects denied knowledge or ownership of the money. Upon culmination of Operation Skyline, over \$2.7 million in cash was seized.

These examples show how we use asset forfeiture to take the profit out of drug trafficking. We are sure that

most Americans agree that criminals, including drug dealers, should not be allowed to benefit financially from their illegal acts. As these illustrations show, we conduct asset seizures against real criminals, and these actions are a vital part of DEA's effort to combat drug crime. If we did not have civil asset forfeiture, it would severely cripple law enforcement's ability to strike the kind of blows against drug trafficking illustrated by these examples.

Thank you very much, Madam Chairwoman and members of the committee.

The Chair: Thank you, Mr D'Orazio. There is time perhaps for one question each.

Mr Kormos: This is pretty discouraging stuff this morning. My impression is that notwithstanding the very—dare I say it?—liberal seizure standards you have, you're still just nipping, like a fly buzzing around you, or a mosquito. I'm not criticizing the process, because I think it's repugnant for any citizen to see criminals keeping the profits of their crime, but you haven't suggested that this has in any way even dented the drug trafficking industry. It just seems so incredibly huge, profitable, and big bucks. Can you tell us that you have made a calculable impact on drug trafficking per se as a result of asset seizure?

Mr D'Orazio: I agree with you that there are plenty of opportunities to exercise asset forfeiture. I think but for asset forfeiture, the problem would be a lot worse. If you need quantitative numbers, I think I've listed the portion that DEA was responsible for throughout the years, which is significant.

Mr Kormos: I don't see how it could be much worse. That's my problem, I guess. Thank you.

Mr Tilson: Our standard of proof is talked about in section 16 of the bill. I'd like you to elaborate somewhat on your preponderance-of-evidence standard, as to whether that's a civil standard, or is that something else?

Mr D'Orazio: The preponderance-of-evidence standard is a civil standard that's used in civil asset forfeiture. It's generally described as a weighing of the evidence to the extent that 51% of a given fact is true, and it's used exclusively in a civil proceeding.

Mr Tilson: When I use the words "balance of probabilities," are you familiar with that term?

Mr D'Orazio: That term is not used in US jurisprudence.

Mr Tilson: The test that most of the American jurisdictions, if not all of them, use—I'm trying to compare that to the test that's being proposed in this bill, but it doesn't sound like you're able to do that.

Mr D'Orazio: I'm not familiar with what the balance of probabilities would be in Canada. Another description of a preponderance-of-evidence standard has been "more likely than not" that a given fact is true.

Mr Tilson: That's a good way of putting it. Thank you.

Mr Caplan: I'm just curious, Mr D'Orazio, if you're familiar with any situations where assets were seized or forfeited from somebody who was innocent, where there

was that kind of case, and what the result was. Were they able to get back their assets, or what kind of consequences were there?

Mr D'Orazio: I think the Drug Enforcement Administration would potentially seize property of innocent owners due to the standards involved. However, there are protections that are built into the system to ensure that the innocent owners are adequately protected from an unjust forfeiture of their property.

Mr Caplan: Maybe you could tell us a little bit about that. What were the protections from an unjust seizure?

Mr D'Orazio: For one, I would have to say that the Drug Enforcement Administration does not conduct unjust seizures. We do extensive training of our agents on how to conduct seizures and it's done according to the law and the Constitution. In my experience with the DEA, in 10 years I have yet to see someone sue an agent successfully for an illegal-asset-forfeiture seizure. US law permits aggrieved individuals not only to go through the forfeiture process to protect their assets but also to proceed against the agency and the individual agent personally if they feel that an illegal seizure has occurred.

Mr Caplan: But there is no protection in Bill 155 for that kind of remedy, is there?

Mr D'Orazio: I've read Bill 155. I have been advised it would be inappropriate for me to comment on the bill—

Mr Caplan: We're having hearings on Bill 155.

Mr D'Orazio: —but there are many provisions in Bill 155 that are also present in US law. One of the provisions is the protection that innocent owners have against the forfeiture of their property. That is in US law, and the Drug Enforcement Administration fully supports that law.

The Chair: Thank you very much for your presentation this morning, Mr D'Orazio.

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FEDERAL BUREAU OF INVESTIGATION

The Chair: The next presenter is Mr Tom Fuentes, chief, organized crime section, criminal investigation for the Federal Bureau of Investigation. Good morning, Chief.

Mr Tom Fuentes: Good morning. Thank you for inviting me here this morning. My name is Tom Fuentes. I'm chief of the FBI's organized crime section. I've served in this position for the last three and a half years. I've been an FBI special agent for over 21 years.

The mission of the FBI's organized crime program is to identify and neutralize criminal organizations that present a threat to American society but also an international threat, and therefore indirectly to American society through threats to our allies and working partners overseas.

The FBI defines organized crime as any group having some manner of formalized structure which is motivated by greed and maintains its position through the use of violence or threats of violence and thereby has a sig-

nificant impact over the people in their various localities and regions. This differs from definitions concerning terrorism, for example, which may be motivated by ideology or some other belief system. In the case of organized crime, we define it fairly narrowly as not merely a criminal conspiracy or a group of individuals gathering to commit a crime, but a structured organization which normally attempts to exist for a long run, such as a La Cosa Nostra crime family or a Sicilian Mafia crime family.

The FBI's organized crime section is divided into three basic components. We have a unit addressing La Cosa Nostra—Italian organized crime and labour racketeering; a unit addressing Asian criminal enterprises; and an agent addressing Eurasian and Russian-speaking organized crime groups.

La Cosa Nostra is considered by the FBI and the United States Department of Justice as still the most significant organized crime threat to the United States. I should add here that in our organized crime program we separate drug trafficking organizations from our organized crime program, so groups that are addressed by our drug section and the DEA that specialize almost exclusively in drug trafficking such as the Mexican and South American drug trafficking organizations are addressed in a different program. Our program addresses predominantly Italian—La Cosa Nostra—Eurasian and Asian organizations.

Currently in the United States we place La Cosa Nostra membership at approximately 1,000 members. Initially, for many years, we had 25 structured La Cosa Nostra families. We feel we've reduced that now to about 10 or 11 that are still posing a significant threat, including the five New York-based La Cosa Nostra families and the New York/New Jersey-based DeCavalcante family.

In addition, we have, I should add here, with regard to Italian organized crime a number of very significant investigations that we've conducted over the years. Currently, new investigations are ongoing with not only the RCMP and CSIS, but also many of the provinces and the large municipalities here in Canada, including Toronto, Montreal and Vancouver.

In our program we have a number of investigations also connected to Canada involving Asian criminal enterprises. Throughout the 1990s, many people expected Hong Kong and Chinese-based triads to attempt to relocate to North America in connection with the turnover of Hong Kong in 1997 back to the PRC. We did not see that level of departure from Hong Kong, but we did see significant immigration to North America, to many of the Asian communities in the US and then predominantly into Vancouver in Canada. Along with the good citizens who immigrated, we also had organized crime follow them, in many cases preying on their own communities and in some cases now expanding into the general populations of both our countries.

We have a number of investigations involving the trafficking of southeast Asian heroin in particular from

Asia into Vancouver, across mainland Canada and then down into the northeast part of United States. A number of these investigations are ongoing and sensitive, but we do see the nexus between large-scale international organized crime in large cities in both of our countries.

We also have more recently, during the last 10 years, seen a tremendous escalation in Eurasian organized crime groups. This would include Russian groups based in Moscow and several other Eastern European cities from the former Soviet Union, and also newly emerging groups such as from Kosovo and some other areas of eastern Europe that are expanding their operations worldwide and in many cases operating, again, in Canada and in the United States.

We participate in a number of international working groups and organizations. I represent the FBI at the G8 law enforcement project subgroup. Canada is represented by both the RCMP and CSIS, colleagues of mine who have attended many of these meetings over the years, and also from the other G8 members who attend these meetings. It's already been true in our individual countries, but we have now seen the connection growing internationally, motivated by the profits.

What we are seeing and what concerns us the most is that the dollar values that we are speaking of would have been unbelievable to the original organized crime activities of many of our groups. For example, La Cosa Nostra organizations generating tens of thousands of dollars in individual gambling operations or tax schemes and various other fraud cases pale in comparison to some of the financial crimes that we are beginning to see involving attempts to penetrate the global financial network and our securities industries and some of our multinational large corporations, generating billions of dollars of profit for organized crime internationally, compared to millions or hundreds of millions in the past. We have, for example, the Bank of New York investigation involving the transfer of \$7 billion over 18 months to three accounts in the Bank of New York. In this case, we are researching and analyzing 286,000 financial transactions over that 18-month period. The transactions passed through over 100 banks in 35 countries, including Canada and, obviously, the US.

As I mentioned earlier, we look at organized crime as being motivated strictly by the money, the greed factor, and the acquisition of power which comes from the wealth they're able to attain and retain. We feel very strongly in the US that both criminal and civil forfeiture provide a significant tool in being able to at least take away the profit motive in the first place, or reduce the profit motive—again, it doesn't entirely do so, but we think it is effective in making a significant reduction—and, if they've already decided to engage in criminal activity and have already attained the proceeds, to at least take that away so that they can't maintain their power base by maintaining control of the assets or pass them on to other family members or subordinates in the criminal organization. In some cases, we see where the older generation almost stoically go to jail, knowing that

they've passed on the wealth and the power to the next generation, to their sons, who will acquire that control of the organized crime families.

I should add that I am not a forfeiture analyst or forfeiture specialist in terms of the processing of the financial records or in terms of the actual litigation surrounding the seizure and forfeiture of assets. But what I do address is that this is a tool that we use in an attempt to eliminate or significantly disrupt the organization itself. So we are not looking at forfeiture in our program as a method of generating income for the United States government or for our agency or the ability to seize proceeds of crime strictly so that we can keep that and supplement our budget. We are looking at this strictly from how it impacts on the organized crime group itself, on their ability to maintain their power, their base of operations and use that wealth to maintain that power base, to conduct the corruption that's necessary in order for an organized crime group to sustain itself and enable it to manipulate our systems, which can only be done if you're in control of significant wealth.

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The Chair: Thank you very much, Mr Fuentes. We have enough time for perhaps two minutes each.

Mr Toby Barrett (Haldimand-Norfolk-Brant): Thank you, Mr Fuentes. For a number of years, I understand that the US federal government and a number of states have used their RICO laws to go after unlawful activity.

Mr Fuentes: Yes.

Mr Barrett: A couple of years ago the Ontario government and, I think, Guatemala used the US RICO laws to go after tobacco companies. I think this was thrown out of court. I don't know whether it's still being pursued. Is it feasible for foreign countries to use US RICO legislation to go after organized institutions that may be affecting Ontario citizens or residents of other countries?

Mr Fuentes: It's a very difficult question because the RICO statute is an extremely powerful tool. It took a long time from the time of its passage in the US in 1970 until the time that we began bringing significant RICO prosecutions, approximately 10 years, in the United States. There was a high learning curve, both for the investigators and for the prosecutors themselves. I think the fact that it's also sensitive to the context of a much larger level of US laws and protections—our constitutional safeguards, the Bill of Rights and protections against unlawful search and seizure and privacy laws are all intertwined. The RICO statute had to be used in that context. So I can't specifically comment on how that will affect other countries, not knowing the rest of their criminal justice system and infrastructure.

Mr Tilson: Very briefly, can you tell us how the proceeds of assets—money, anything—that are forfeited are distributed in the United States?

Mr Fuentes: In our system, during an FBI investigation, when we actually seize the assets, then the processing of that is turned over to the US Marshals Service.

It actually gains control over the assets and then oversees whether the assets are auctioned or however they're disposed of. As a general rule, the proceeds go back to the general US treasury.

I know under certain limited circumstances some of the assets, for instance, an airplane or a boat, can be returned to law enforcement, and in certain undercover operations, with very close scrutiny from the Department of Justice, assets can be returned during an ongoing project. So if you have a money-laundering investigation, certain proceeds can be returned during that project to conduct that investigation, but it's very strictly controlled. As a general rule, though, it goes to the marshals, it goes back to the general treasury.

Mr Caplan: Thank you, Mr Fuentes, for coming here today and for your presentation. One of the aspects of Bill 155 is the very broad and sweeping powers that allow the Attorney General to collect and disseminate personal information about literally anybody in the province of Ontario. Do you have similar kinds of laws that are used or that are related to the work you do at the FBI as it relates to organized crime?

Mr Fuentes: As I mentioned earlier, I'm not an expert in the actual litigation surrounding the forfeiture. During our investigations we assign forfeiture specialists to the team, to the task force, and they, with the attorneys both in the United States Attorney's office and with the forfeiture attorneys at the Department of Justice, work very closely on that. That's really beyond my expertise.

Mr Caplan: I'm just curious, because Bill 155 says that the Attorney General can collect personal information about any individual, to put it very roughly, to determine whether they should even proceed with an action under Bill 155, to conduct a proceeding or to enforce an order. The first part really bothers me. We're going to start collecting information to decide whether or not we're going to begin an investigation. I'm really wondering what kind of tool that would be to the police or to the Attorney General in order to combat what they obviously feel is a very significant problem. Do you have any opinion about that?

Mr Fuentes: I'm trying to determine what you're asking, really, not having the full context of that part of the provision. This is a very resource-intensive area. It's very difficult to analyze the financial records, as was mentioned earlier: the number of shell corporations and fraudulent accounts and individuals who don't exist who maintain these accounts. It's very difficult to do, so it may be a determination of whether it's going to be worth it to assign those kind of resources to do that investigation. I'm not sure. But we don't do it quite that way, as I mentioned. We're looking at the criminal activity and the proceeds associated with the crime.

Mr Kormos: Thank you very much. I've listened carefully to you and other law enforcement officers, both American and Canadian, this morning. I hear you talk, and I have to accept everything you say. We're all well aware of the grief that drug trafficking, prostitution and all the things you spoke of bring to families and communities.

At the same time, people are watching—bear with me for a minute—the Sopranos, a Hollywood production, on a weekly basis. People are talking over the coffee pot at the office about Tony's anxiety attacks and Carmela's lack of fulfillment. I have some real concern about a culture that glamorizes mob life, portrays it in a way that we identify with it sympathetically and then purports to be so adamant about obliterating it.

My concern is that organized crime—because you've had RICO since, what, the early 1970s and low standards in many cases for thresholds of seizing assets. Has organized crime become so internalized, so much a part of the North American culture, that they're merely paying taxes like any other establishment corporation? Do they regard this as simply their tax that they pay? They're going to lose 10% or 20% of their proceeds every year to a RICO effort or to a Bill 155 effort. Is that their perspective? Are they really afraid of being put out of business by asset seizure?

Mr Fuentes: Yes, they are afraid of it.

Mr Kormos: How do we know that?

Mr Fuentes: We know that from extensive debriefings. We've had very high-level defections at the boss, underboss and capo level within a number of La Cosa Nostra families. Individuals such as Salvatore Gravano, Sammy Gravano, and others have told us that that's an extreme fear that they have, that they will go through a lifetime of acquiring this wealth and not be able to maintain it from a personal perspective, which they understand, but then not even be able to pass it on to members of their family and other associates and just lose it entirely, to lose all of the power and glamour that's associated with that.

I share your concern that our society has glamorized high-level organized crime figures and grants them celebrity status. I'm not in a position to comment whether or not Al Capone was a greater celebrity in Chicago in 1925 than John Gotti was in New York City in 1990 or some of the individuals are now.

We know currently, for example, with La Cosa Nostra, we have individuals who do not want to be identified as the bosses. We have some of our LCN families in the US being run by two or three members of a committee who don't want to be identified and assume the boss position and have that celebrity profile.

We see both sides of that and we also see the efforts on their part to take many of their assets now and try to remove them from the US and put them into safe havens. We all know of offshore tax shelters. But beyond just the accounts being located offshore, we are working a number of international cases where members from overseas, some of these very large Eurasian organized crime groups that have obtained billions of dollars as a result of looting in their home countries and some of the countries of the former Soviet Union, are basically shopping for countries to acquire land.

We've had international surveillances involving our partners here in Canada and our partners in Australia and a couple of other very desirable countries where these

individuals have taken a trip and visited all these countries trying to determine where the best place would be to buy land, buy hotels, buy resort housing, buy businesses and put their assets into more tangible assets than just merely having them in offshore bank accounts, where it's really just a paper figure.

We know of that from our personal experience and our personal observation in ongoing cases that we have right now. Basically they're shopping for the countries that have not only the most lenient sentencing guidelines or the most inexperienced or inefficient law enforcement or criminal justice systems, but a desirable place to live. Obviously Canada, the United States, many countries that are extremely desirable, have strong economies and are just terrific countries, as they attract the immigrants of the world and the honest people, they attract these criminal elements as well. They know that their assets will be safe in these countries because the economies are secure.

The perspective from which we look at it is, they're shopping, they want to put the money into something that they'll be able to keep. If they think they're going to lose it, they're going to go somewhere else.

Mr Kormos: So they didn't buy any Nortel last night.

Mr Fuentes: No comment.

The Chair: Thank you very much, Mr Fuentes, for your presentation.

We will recess for lunch and reconvene promptly at 1 o'clock.

The committee recessed from 1202 to 1302.

JUDY MacDONALD

The Chair: I call the meeting to order. The first delegation that we have this afternoon is Judy MacDonald. Good afternoon. You have 10 minutes and, hopefully, in that 10 minutes we'll have time to ask you some questions as well.

Ms Judy MacDonald: Ladies and gentlemen, Madam Chair and members of provincial Parliament, I thank you for this opportunity to be heard in public before your committee regarding the proposed Bill 155. My name is Judy MacDonald Musitano. I am before you as a law-abiding citizen, a taxpaying Canadian citizen who has, having been born, raised and educated in the Hamilton area, chosen to continue to reside in the city of Hamilton and operate a business there. I do not advocate organized crime or any other illegal activity, nor do I condone the livelihood supported by the proceeds of illegal or criminal wrongdoing. Yet I am told that I am a Mafia wife and that the business I laboriously worked and toiled to build over the last 15 years is owned by organized crime.

It is also apparent that my choice of mate has jeopardized my privilege to be judged and respected on my own merits. On or about the occasion of my marriage, a Hamilton police officer was noted to have made the flippant comment to me, "It's bad enough that you have to do business with the Mob, now you have to marry one too." Regardless of my personal and professional accom-

plishments as an individual, I have been labeled in some circles as a member of a crime family. If this were so, why would I come before this committee today?

The purpose of my appearance here today is to present myself and my circumstances and to use these as illustrations of the overwhelming forthcoming injustices with the inception of Bill 155. I am a prominent businesswoman in the Hamilton community. As an individual of strong moral character and integrity who has worked diligently to build a reputable and respectable business, I find it distastefully unconstitutional that I be painted with strokes from the same brush that paints illicit, illegal and criminal entrepreneurs. My personal encounters and experiences with the Hamilton police department reflect long-standing prejudices between them and those they presume to be organized crime.

As I have already pointed out, the allegations, unfounded and slanderous, are made without substantiated evidence or proof of criminal activity. Herein lies my fear: hearsay equals the assumption of guilt even before Bill 155 is in place. Where does the concept in Canadian law "innocent til proven guilty" come into the process? How do you propose to protect innocent individuals?

I have copies of correspondence to which I have had replies. You have them before you. Throughout the past months I have become increasingly aware and concerned as to from where information is derived and just who is doing the investigations. It would appear that once information is given to the offices of the Attorney General, this information is relied upon further to prosecute individuals who are accused and charged with criminal offences. Evidence is collected and investigations are to be done in order for crowns to be able to act accordingly. If misinformation is given and the individual is found not to have done any wrongdoing, is it up to the individual to prove their innocence? With this bill, if I cannot obtain information under the Freedom of Information and Protection of Privacy Act nor access my own property, accounts, documentation, could you clarify with me how I am to defend myself?

Is this legislation also limited only to individuals? Are you as a government body prepared to deal with already widespread levels of corruption and organized crime? Consider the Criminal Intelligence Service Ontario—a report still not made public in regard to organized crime in waste management. Are these larger corporate giants excluded? Do you intend to make this a fair playing field for all of us? Are you going to ignore the public being victimized by these sectors as well? Is this in the public interest, or not in the interests of justice?

We talk of proceeds of crime. Are we prepared to look at the benefit of the revenues the province is receiving from the money laundering that already exists in the casinos throughout this province?

I am aware of the purpose and intention of this bill. Organized crime has its impact on all and, yes, I too have been victimized. I ask you to take a close look at the method of enforcement. In 1997, the provincial government funded \$14 million for gambling and illegal

activity. It was followed by a special investigation into the murders of two individuals in the Hamilton and Niagara areas. Within a span of eight months, charges were laid. Did this investigation consume all of these funds specifically designated for organized crime activity? Did the provincial government get their funds back for any unused portions of these funds? I am told that this major crime investigation only consumed \$2 million of these funds, so where's the change?

The purpose is clear. Include in your bill protection to be afforded to the individual. I serve to gain nothing from coming here today. I am not a member of the legal community nor am I a member of the law enforcement community. I am a citizen and I have no protection from being victimized from this legislation. I would receive no recovery from losing my reputation, my business, my livelihood and my life. I use myself as an example before you of the damage that can be done, and already has been done, where there are no safeguards in place to protect individuals from allegations that they are part of organized crime or any unlawful activity.

I can tell you this: no one will ever take away my integrity or my character, and thus I am before you today. I thank you.

The Chair: Thank you very much, Ms MacDonald. There's time perhaps for one question from each party.

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Mr Dominic Agostino (Hamilton East): First of all, I want to thank you for your courage in appearing today. I know you didn't have to do this, and I know it's probably not easy.

Ms MacDonald: I chose to do this, Mr Agostino—

Mr Agostino: Exactly. I appreciate that.

Ms MacDonald: —because I am very concerned over this legislation, not for the purpose of endorsing organized crime but for the citizens who have put everybody where they are in this room today.

Mr Agostino: You've made some very valid points, particularly in your letter, about the stigma that often is associated. As all members here believe, I think, that once someone has served the penalty that has been assigned by the courts for a crime they've committed, they should be allowed to carry on with their lives. Their lives should not simply be hinged on what happened in the past. I think you've pointed that out.

The question I want to ask you on the concerns you outline overall: do you believe this legislation will continue to stigmatize and target individuals unfairly simply based on perceptions or the past, rather than on what is occurring in their lives today?

Ms MacDonald: I can assure you that has already happened. I stand on no merit on my own accord in a hearing. I have been law-abiding. My husband's past is his past. I believe that a person should be allowed to continue through, if he's paid his debt to society.

The Hamilton regional police department at one point did tell me I was not privy to any privileges granted any other citizen because of whom I chose to marry. I was judged in a hearing on his past criminal background as

opposed to my merits and what I've diligently worked for as an individual. That is where this bill is opening up the playing field, and it is very dangerous. I am an example. It has cost me \$7,000 and three years to defend myself in court already, with no remuneration at all.

Mr Kormos: You've prepared a package of letters. One is a most unusual apology from the prosecutor, city of Mississauga, to Maria Musitano. I trust it's your daughter.

Ms MacDonald: That's correct; that's our daughter. She went to pay a traffic violation, and unfortunately the comment was made, even though it was said in jest.

Mr Kormos: What was the comment?

Ms MacDonald: "The only reason this officer is reducing your speeding ticket is that he believes you are part of a crime family." I take extreme exception these kinds of statements. Think before you speak.

It would be similar to me accusing you because you and I may have a coffee together. We are not guilty by association. There is legislation in place, as it exists right now, for proceeds of crime. Do not get me wrong; I do not condone any illegal activity. I work seven days a week from morning to night, and I know where every dime of mine is coming from and going to, and so it should be around the circle.

Children or anyone affiliated with a name should not be—the issue at that point was to deal with a traffic violation; it was not on her family history. We certainly can agree that generations should not be accountable for previous generations. They have done their time. They have paid their penalties to society. Let them get on with their lives. There are individuals out there—and we can all agree—you do the crime, you pay the price. But prove, beyond a reasonable doubt, that an offence has occurred.

The Chair: Thank you very much, Ms MacDonald, for coming.

LORNE PARK

The Chair: The next presenter is James Park. Good afternoon, Mr Park.

Mr Lorne Park: Hi, how are you today?

The Chair: I'm well. How are you?

Mr Park: Very good.

The Chair: You have 10 minutes.

Mr Park: Yes, and hopefully I can use it wisely.

My name is Lorne Park. I was born and raised in Hamilton. I'm 63 years old. I'll be 64 this year.

Organized crime is the buzzword and flavour of the new millennium. I would like to thank this committee for allowing me to speak on Bill 155 and the concerns I have with this bill. First of all, I support the principle of this bill. In a perfect world it would work. However, in the real, not-so-perfect world, I have some serious doubts.

This bill has many downsides, as it removes my rights as set out in the Canada Act. Without protection, this bill could create an atmosphere of no accountability of the

people enforcing it, and this could easily lead to civil unrest. After all, we do not live in a perfect world.

This committee has copies of the fabricated allegations directed at me by vindictive civil servants and our local police department in Hamilton, who did an extremely sloppy investigation to create an atmosphere of guilt. This led to a costly court case and the destruction of my name and business, which I will never fully recover from.

Why did it take five years through freedom of information to get only part of the information? I was entitled to all the information as part of full disclosure at my trial. The standard answer from the people responsible is, "This is a travesty of justice. We are sorry. You are a victim of the system. We must look ahead to the future and work as a team."

The people who created these fabrications are well-protected and have benefited with promotions or get-out-of-jail-free cards. You also have the written apology from the chief of police, which has helped me some but not a heck of a lot.

For years the Ministry of Consumer and Commercial Relations has turned a blind eye to ensure fairness and accountability in the marketplace. These regulators continue to cost the taxpayers hundreds of millions of dollars a year—and I mean hundreds of millions of dollars a year. They wait for a buyout package and then enter into the self-regulating industry, which is an industry in disarray and that operates like the Wild West. Hopefully, we can get into some serious dialogue on this another day.

Each member has a copy of a letter sent to the previous member of the House, Mr Trevor Pettit, outlining several methods which I feel should be added to this legislation to protect the public from the abuse and breach of trust which exists today and will escalate if we are not protected. I ask each member of this committee to request a copy of the two binders submitted by the Ontario Bailiffs Association for changes to the Bailiffs Act. As these are public documents, there should be no problem getting them. I can guarantee a shocking insight into corruption and the very serious problems which exist with this ministry and other ministries associated with the Ministry of Consumer and Commercial Relations.

If this bill goes through, I think you folks should turn the cannons over and start investigating the Ministry of Consumer and Commercial Relations. I really believe that.

Going back to November 2000, I appeared in a Hamilton courtroom to post bail for my nephew—it was a domestic problem. After two days of trying to get bail, the lawyer for my nephew told me, "We're getting kind of jacked around here." It eventually came out in a bail hearing two days later—I don't know if anybody in this room has been at a bail hearing, but there are many questions answered and many questions asked. The whole theory of this bail hearing was directed, and did a 45-degree turn, to find out if I was part of organized crime because I've worked with a couple of people in the city putting together books that deal with organized crime.

We have a massive problem in the city of Hamilton with policing and bureaucrats. I'll tell you something that people here in Toronto don't understand: Hamilton exists and civilization exists west of Toronto. The city of Hamilton has more organized crime per capita than any city in North America. You've got the legislation. You people have abused the legislation. You don't want to get into enforcing the legislation you've got. This bill, under the guise of bikers, is a smokescreen. This bill does not protect Joe Blow, because you're taking everything he or she owns and then saying, "Defend yourself." Defend yourself with what?

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You've also got a bill that will allow industry to get away with what they've been getting away with for years in my area because the regulators do not want to face a band of lawyers in three-piece silk suits, 10 or 15 at a crack. So the bill is going to hurt the little guy or somebody who is not politically correct in my city.

Thank you very much for allowing me to speak. If there are any questions, I'd be happy to answer.

The Chair: We have about three minutes left for questions. Anyone from the government side?

Mr O'Toole: I just wanted to make sure I recorded that correctly. You said, "The massive problem in Hamilton is more organized crime than in any city in North America."

Mr Park: Per population, yes.

Mr O'Toole: Do you have some substantive basis for making that kind of claim? It's a fairly serious indictment of the city of Hamilton.

Mr Park: It sure is. If you give me your card, sir, I will get you that information and fax it to you.

Mr Agostino: With respect to the comments made by Mr Park, I would take exception to that. I believe we have problems in Hamilton, as there are anywhere else across Canada and North America, but I think it's grossly unfair to the city of Hamilton and to the reputation of Hamiltonians to label it as the worst organized crime city per capita in North America or anywhere else. I think you have done a great disservice to the citizens of Hamilton. I respect your opinion, I respect what you have to say here today, but I think it's unfair to tar a community and a city in Ontario of almost 500,000 people as somehow the centre of organized crime in Canada. I think that's unfair and I hope you'll withdraw that.

Mr Park: Mr Agostino, I did not say Hamilton was the centre of organized crime for Canada or any other place. What I'm saying is that organized crime is rampant in the city of Hamilton. We have the tools, all the tools are there, but nothing has been done, absolutely nothing.

Mr Agostino: Sir, you said "per capita," so you're saying it is the largest, and Mr O'Toole restated that it is per capita the largest centre of organized crime, or the most organized crime, in North America.

Mr Park: I said, and I can be corrected if I'm wrong, that there is more organized crime in Hamilton per capita than anywhere in North America.

Mr Kormos: There, Mr Agostino, you got him to say it three times.

Mr Agostino: And I think it's wrong and it's unfair.

The Chair: Mr Kormos, you've got one minute.

Mr Kormos: Mr Park, you've got the most unusual letter here from a chief of police in Hamilton certifying that they are not in possession of any information that connects you with organized crime. I've never seen one of these before in my life.

Mr Park: Very fortunate.

Mr Kormos: I don't know whether I could get one if I asked for one too. How did you get the chief of police of Hamilton to write a letter saying, "We have no information connecting you with organized crime"? That's pretty wacky, quite frankly.

Mr Park: You would have to have been at the bail hearing when I was accused of being part and parcel of organized crime. If you gentlemen had read my brief, you would have got into freedom of information where I was falsely accused of being part of organized crime.

The Chair: Thank you, Mr Park.

TAMIL ANTI-RACISM COMMITTEE

The Chair: The next delegation is Sri-Guggan Sri-Skanda-Rajah from the Tamil Anti-Racism Committee. Good afternoon.

Mr Sri-Guggan Sri-Skanda-Rajah: I am hoping that you have received through the clerk a copy of the brief that the Tamil Anti-Racism Committee is presenting.

The Chair: Yes, we have your brief.

Mr Sri-Skanda-Rajah: I am not proposing to read the brief in its entirety. I would rather concentrate on some salient points. The brief, including the salient points, will by illustration of example enable you to sense some of the critiques that are being used by the Tamil Anti-Racism Committee.

The most important thing I want to convey to the committee is that the anti-racism committee supports the intent and purpose of the bill. I don't think anyone in my community, for example, would support the idea that people committing illegal activities should profit from them and therefore be in a position to keep the proceeds safely.

It is timely that this bill has been proposed. Therefore the committee supports the intention and the objectives of the bill. However, you will see set out in the submission some points that raise concerns as to whether this bill will be able to stand the test of charter challenges etc.

Let me read from portions of the bill. Paragraph (b) of the definitions, under section 2, infers that even if an offence takes place outside of the Canadian jurisdiction, a person can be prosecuted under the bill provided that offence is illegal in Canada or Ontario.

That component of the definition is problematic on several fronts. First and foremost, the Canadian legal system is based on the fundamental values of due process, charter rights for the accused and the rule of law. In contrast, the majority of the world community does not subscribe to these values and in many places the legal

systems are simply corrupt, arbitrary and unacceptable by Canadian standards. The Canadian Charter of Rights and Freedoms guarantees that everyone shall be accorded due process when charged with an offence. In many jurisdictions the concept of due process does not exist. Canadian law requires detained prisoners to be accorded certain fundamental resources such as the right to an attorney, the right to remain silent, the right to bail, the right to an impartial judge or jury and other rights. This is in sharp contrast to the way many other countries operate.

A recent issue involving a young girl in Nigeria is a case in point. I am using that here reluctantly, but nevertheless to illustrate a point I want to make. Bariya Ibrahim Magazu was allegedly impregnated as a result of being raped by her father's acquaintances. She was charged and subsequently convicted of having sexual relations outside of marriage and falsely accusing three men of coercing her into having sex. The particular trial, according to many human rights observers, failed to accord the young woman due process. She was sentenced without the protection of her civil rights by what appears to be a questionable legal system and legal proceedings. Further, the young woman had the onus of proving her innocence as opposed to the state proving her guilt.

Hypothetically, if Bariya were a resident of Ontario and the persons who had sexual relations with her compensated her by depositing a sum of money in an account in Nigeria, that sum of money, in accordance with the provisions of this bill, would be property obtained by illegal activity. In such an instance, are the people of Ontario ready to accept that Bariya, a person resident in Ontario, has committed a crime in Nigeria? Would we, in such circumstances, be seeking an interlocutory order to preserve and secure their property—money—on the basis that it's the proceeds of illegal activity, as defined in this bill? In such an instance, are the people of Ontario ready to accept the word of the Nigerian government that a person living here in Ontario has committed a crime in Nigeria? Are the people of Ontario willing in such instances to accept as credible, evidence provided by the Nigerian government to use in a case to be tried in Ontario?

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There are some other examples that I have set out in the brief. I am not going to read those, but if you take the time to read it, it'll give you a fairly good idea why in circumstances the provisions of this bill will not work properly.

The proposal that is being put forward, and you will see that on page 3, is that some of the draft of this legislation should be amended so that it will deal with safeguarding problems developing from jurisdictions that have different systems of law, a different set of values etc.

The Canadian Charter of Rights and Freedoms is a largely progressive and valuable document that requires all Canadian laws to be consistent with those principles. The bill before this committee, although well meaning, is contrary, in our respectful submission, to the values

espoused in the charter. In using evidence or convictions in another jurisdiction, without setting any type of standards by which we could assess that law, makes this bill likely to fall foul of the charter. Should a resident of Ontario be penalized here for an alleged crime based on a lower standard of a third country? If someone were to be charged under the legislation on information based on a conviction in a third jurisdiction, are we implicitly acknowledging the validity of that jurisdiction's legal system, even though it may be entirely autocratic or arbitrary?

The second aspect of the criticism that we direct to this bill relates to the provisions that provide for not giving notice to parties that would be affected by proceedings under this legislation. I think the justification for not providing notice when you seek an interlocutory motion is based on the reality that in the modern context it's very easy to dispose of property electronically. In a matter of seconds, you could transfer the interest in a property from one to another person etc. Therefore, in that sense, not giving notice to obtain an interlocutory order does make sense. The question is, once you have obtained that interlocutory order, is there any justification for not providing notice to the parties who are affected by such an order?

Subsection 4(1) provides that you are able to not give notice up to 10 days. I believe there are further subsections that suggest that you could seek an extension of not giving notice, etc. I don't think that is really warranted. I think if one follows the standards that regularly apply on interlocutory issues and the property has been preserved and secured, it's incumbent that notice be given. To seek a further extension, I would say, is more often an abuse of process than anything else.

Subsection 4(2) seems to mandate that a judge before whom an interlocutory order is sought is obliged to make an order. I think in that subsection the word "shall" has been very specifically used. What is troubling in that scenario is that a party, namely the Attorney General, is seeking an interlocutory order—it's only the party seeking an interlocutory order that is presenting evidence at that stage. Even if the judge has doubts in mind as a result of that evidence, you are telling the judge under that subsection that an order shall issue. No other evidence has been heard. I don't think that is an appropriate type of demand. I don't think it's appropriate that it should be mandated. I think it's important that a judge of the Superior Court have the discretion as to whether such an interlocutory order should be issued and what terms and conditions should attach to it.

I'm sure there are other concerns with this bill. There has been reference to, I believe, the privacy area. I don't propose to get into that because I think I'm eating into the time. I'd rather be prepared to answer questions. Thank you.

The Chair: Thank you very much, Mr Sri-Skanda-Rajah. We have about five minutes for questions.

Mr Kormos: We've got five minutes total, or five minutes per caucus?

The Chair: Five minutes total.

Mr Kormos: So you'll let me know when I'm halfway through?

The Chair: I will indeed.

Mr Kormos: Very interesting and unique observations. What I want to make perfectly clear is that the word "shall" as compared to "may," in your view, is mandatory and denies a judge the discretion?

Mr Sri-Skanda-Rajah: Precisely, Mr Kormos.

Mr Kormos: That's relatively straightforward.

What's a little more complicated, though, is the business of out-of-country convictions. You've made reference to a number of jurisdictions that have, to be generous at the very least, criminal justice systems that don't have the same safeguards for accused persons as ours does.

Mr Sri-Skanda-Rajah: Yes.

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Mr Kormos: You're also contemplating criminal justice systems which are the tool of a totalitarian state?

Mr Sri-Skanda-Rajah: Yes.

Mr Kormos: So you're talking about the scenario wherein, let's say, a politician who was not in favour with the government could be accused, and indeed convicted, of drug trafficking, some other vile crime, merely to discredit him or her, where in that jurisdiction the courts were in the political control of the government.

Mr Sri-Skanda-Rajah: Those are scenarios I wish didn't exist but are very real in the world out there.

Mr Kormos: Because in that case it wouldn't be open for the government to say that wouldn't constitute a crime in Canada, because although there are some out-of-Canada offences that aren't offences in Canada, clearly drug trafficking, any number of sexual offences, frauds and so on are all crimes in Canada. So I very much share your concern about the reliance upon that conviction when it's not a conviction obtained in Canada or a conviction obtained with the same standards as a Canadian conviction would be being used as prima facie evidence of a commission of crime.

Mr Sri-Skanda-Rajah: That is one of the concerns that this bill, in its present form, is likely to lead to: mistakes of that nature.

Mr Kormos: I think everybody agrees that the bona fide proceeds of bona fide crime shouldn't be maintained by the criminal, but I think you raise issues that should cause us some real concern in view of the fact that Canada has a huge immigrant population, including from these jurisdictions that you and Amnesty International referred to. I'd very much like to hear from the government members in this regard.

Mr Tilson: The dilemma I have is that I can end up debating some of these things with you, and I don't think this is the forum. Our role is to listen to what you have to say. I can only say that if you read the bill, the bill only applies to property in Ontario; it doesn't apply to property outside of Ontario. The particular example that you gave I don't believe is a crime in Ontario. You and I may end up debating that, and I don't think this is the forum for that.

The steps to be followed must be approved by a Superior Court judge in the province of Ontario. I know you're aware of that: I assume you've read the bill and that's what the bill says. It only applies to Ontario law when those judges are making those decisions. I can only dispute what you're saying when you talk about the definition of "unlawful activity" in section 2 dealing with offences outside of Ontario. I just dispute what you say.

So that's my problem, sir. We don't have the time to debate it with you, but I will say I thank you for coming and making us aware of your concerns. I don't agree with some of things that you've said, but I do respect you for taking the time to come and make your views known to the committee.

Mr Sri-Skanda-Rajah: Shall I briefly make some observations on the point that you've raised, without necessarily getting to long debate? I think one of the concerns is the weight that would be given if some evidence is produced at the interlocutory stage that suggests that there's a conviction in another jurisdiction. Without getting into the details to see whether precisely applying our standards there would have been a conviction, the prima facie evidence of a conviction, prima facie evidence of what purports to be illegal activity, may hinder an effective application of this legislation. All I'm saying is that we have to fine-tune the legislation to make sure that we catch those things, without—

Mr Tilson: I was only responding to the example that you gave, which may be a crime in another country. It is not a crime in the province of Ontario, and that was my purpose of responding.

Mr Sri-Skanda-Rajah: I think that's a fair comment.

The Chair: Thank you very much, Mr Sri-Skanda-Rajah.

That concludes the meeting for today. Members of the committee, I would remind you that clause-by-clause consideration has been set for March 26. Amendments should be submitted both on this bill and on Bill 118, which we considered last week and on Monday, I believe, by March 19 at 12 noon. This meeting is adjourned.

The committee adjourned at 1345.

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